

Date: 14th February 2018

A Contract for Goods

Between

The Ministry of Justice

And

ForFarmers UK Ltd

The Supply of Farm Animal Feed to:

HMP North Sea Camp

HMP Hewell (Midlands Region)

HMP Kirkham (Lancashire)

HMP Wymott (Lancashire)

HMP East Prescoed (Usk)

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This contract is dated:

PARTIES:

- (1) THE MINISTRY OF JUSTICE of Harcourt House, Chancellor Court, 21 The Calls, Leeds, LS2 7EH9AJ (the “**Authority**”);

AND

- (2) [ForFarmers UK Ltd] with registered company number [00062904] whose registered office is [Horizon House, Fred Castle Way, Rougham Industrial Estate, Rougham, Bury St Edmunds, Suffolk, IP30 9ND] (the “**Supplier**”)

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

WHEREAS

- A. Following a competitive tender process, the Authority wishes to appoint the Supplier to provide Farm Animal Feed to [HMP North Sea Camp, HMP Hewell, HMP Kirkham, HMP Wymott (Lancashire), HMP Kirkham (Preston), HMP East Prescoed (Usk) and the Supplier agrees to provide those goods in accordance with these terms and conditions.

NOW IT IS HEREBY AGREED:

A GENERAL

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 a CCN as authorised to approve agreed Changes.

“**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 Supplier by or on behalf of the Authority; or (ii) which

the Supplier 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 Supplier or its Sub-Contractors for delivery 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 Supplier 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 Supplier in connection with the Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Goods.

“Baseline Security Requirements” means the security requirements in annexe 1 of Schedule 6.

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

“Breach of Security” means an occurrence of:

(a) any unauthorised access to or use of the ICT Environment and/or any Information Assets and/or Authority Data (including Confidential Information) in connection with the Contract;

(b) the loss (physical or otherwise) and/or unauthorised disclosure of any Information Assets and/or Authority Data (including Confidential Information) in connection with the Contract, including copies; and/or

(c) any part of the Supplier System ceasing to comply with the Certification Requirements

“CCN” means a change control notice in the form set out in Schedule 3.

“Certification Requirements” means the requirements set out in paragraph 5.1 of Schedule 6.

“CESG” means the Government’s Communications Electronics Security Group.

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

“Change in Law” means any change in Law which affects the Goods or the delivery of the Goods which comes into force after the Commencement Date.

“Commencement Date” means the date specified in clause A5.1.

“Commercially Sensitive Information” means the information listed in Schedule 4 comprising the information of a commercially sensitive nature relating to:

- (a) the Price; and/or
- (b) the Supplier’s business and investment plans

which the Supplier has informed the Authority would cause the Supplier significant commercial disadvantage or material financial loss if it was disclosed.

“Comparable Supply” means the supply of goods to another customer of the Supplier which are the same or similar to any of the Goods.

“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 Data Protection Legislation. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure otherwise than by breach of clause E3;
- (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” means these terms and conditions, the attached Schedules and any other documents the Parties expressly agree are included.

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

“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”** are interpreted accordingly.

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

“Default” means any breach of the obligations or warranties 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.

“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 specified in clause A5.1.

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

“Extension” means as defined in clause A5.2.

“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 Supplier or the Staff or any other failure in the Supplier’s supply chain.

“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.

“General Change in Law” means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply.

“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 Supplier (or by a Sub-Contractor) under the Contract as specified in Schedule 1 including any modified or alternative goods.

“Government” means Her Majesty’s government of the United Kingdom.

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

“HMRC” means HM Revenue & Customs.

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

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

“Information Assets” means definable pieces of information stored in any manner which are determined by the Authority to be valuable and relevant to the Goods.

“Initial Term” 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.

“ISMS” means the Supplier’s information and management system and processes to manage information security as set out in paragraph 2.3 of Schedule 6.

“IT Health Check” means penetration testing of systems under the Supplier’s control on which Information Assets and/or Authority Data are held which are carried out by third parties in accordance with the CHECK scheme operated by CESG or to an equivalent standard.

“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 Supplier is bound to comply.

“Losses” means losses, liabilities, damages, costs, fines and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation,

litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise.

“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 D1, E1, E2, E3, E8 or I4.

“Month” means calendar month.

“NICs” means National Insurance Contributions.

“Occasion of Tax Non-Compliance” means:

- (a) any tax return of the Supplier 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 Supplier 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 Supplier 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 Supplier 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 Supplier by the Authority under the Contract, as set out in Schedule 2 for the full and proper performance by the Supplier 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 Supplier by the Authority in connection with the Contract.

“PSI 67/2011” is the Prison Service Instruction published on 1st November 2011 relating to the searching of the person as amended from time to time and available at:

<https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2011>

“PSI 10/2012” is the Prison Service Instruction published on 26 March 2012 relating to the Conveyance and Possession of Prohibited Items and other Related Offences as amended from time to time and available at:

<https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2012>

“PSI 07/2014” is the Prison Service Instruction published on 2nd June 2014 relating to security vetting as amended from time to time and available at:

<https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2014>

“PSI 24/2014” is the Prison Service Instruction published on 1st May 2014 relating to information assurance as amended from time to time and available at:

<https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2014>

“Purchase Order” the Authority’s order for the supply of the Goods.

“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 Supplier 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 C1.18 or at any other address given by the Authority to the Supplier 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 Ministry of 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 Supplier is established.

“Replacement Supplier” 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 Supplier for use in relation to the performance of its obligations under the Contract; or
- b) the result of any work done by the Supplier or any Staff in relation to the provision of the Goods.

“Security Plan” means the plan prepared by the Supplier which includes the matters set out in paragraph 3.2 of Schedule 6.

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

“Security Test” means a test carried out by the Supplier, the Authority or a third party to validate the ISMS and the security of all relevant processes and systems on which Information Assets and/or Authority Data are held.

“Specific Change in Law” means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply.

“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 Supplier to perform its obligations under the Contract together with the Supplier’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

“Sub-Contract” means a contract between two 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.

“Supplier Software” means software which is proprietary to the Supplier, including software which is or will be used by the Supplier to provide the Goods and which is set out in Schedule 5.

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

“Tender” means the Supplier’s tender submitted in response to the Authority’s invitation to suppliers for offers to supply the Goods.

“Term” 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.

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

“Third Party IP Claim” has the meaning given to it in clause E6.5 (Intellectual Property Rights).

“Third Party Software” means software which is proprietary to any third party which is or will be used by the Supplier to provide the Goods including the software and which is specified as such in Schedule 5.

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

“Valid Invoice” means an invoice containing the information set out in clause C1.5.

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

“Vulnerability Correction Plan” means a remedial plan prepared by the Supplier to address vulnerabilities identified in an IT Health Check report.

“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 natural persons, a 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) the Schedules form an integral part of the Contract and have effect as if set out in full in the body of the Contract. A reference to the Contract includes the Schedules;
- (h) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time; and
- (i) references to the Contract are references to the Contract as amended from time to time.

A2 Authority Obligations

- A2.1 Save as expressly provided, the Authority’s obligations under the Contract are the Authority’s obligations in its capacity as a contracting counterparty and nothing in the Contract operates as an obligation on, or in any other way fetters or constrains, the Authority in any other capacity.
- A2.2 The exercise by the Authority of its duties and powers in any other capacity shall not make it liable to the Supplier in any way.

A3 Supplier’s Status

- A3.1 The Supplier is an independent contractor and nothing in the Contract creates a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the Contract.
- A3.2 The Supplier shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead another person to believe that the Supplier is acting as the agent or employee of the Authority.

A4 Mistakes in Information

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

A5 Term

A5.1 The Contract starts on the 14th February 2018 (the “**Commencement Date**”) and ends on the 13th February 2022 (the “**End Date**”) unless it is terminated early or extended in accordance with the Contract.

A5.2 The Authority may extend the term of the Contract until the 31st of January 2023 (“**Extension**”). The terms of the Contract will apply throughout the period of any Extension.

A5.3. The following Particular Conditions form part of the Conditions of Contract and shall have the effect of amending, replacing or adding to the Conditions as indicated.

Clause	Heading	Option
G1.8 (a)	Professional Indemnity	The following term shall apply (amendment): Professional Indemnity not required within the contract requirements
B3.7	Delivery	The following term shall apply (replacement): The Authority shall accept and pay for goods supplied earlier than the stipulated delivery lead-times within the specification, provided they are supplied and delivered in accordance with the Contract.
B7	Labelling and Packaging	The following term shall apply (replacement): The Goods shall be packed and marked in a proper manner and in accordance with the Specification Schedule and any statutory requirements and any requirements of the carriers. In particular the Goods shall be accompanied by an advice note with the purchase order number (or other product reference as per specification schedule.

		All containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings
B8	Training	The following term shall apply (amendment): Not Used.
B6.2. b, c B6.3. B6.4	Liquidated Damages	The following term shall apply (amendment): Not Used
B3	Delivery Conduct	The following term shall apply (addition): It is the responsibility of the Contractor to ensure that all direct or third party delivery personnel used in connection with this contract comply with the requirements laid out in the HM Prisons Transport Manager & Drivers Handbook.
E6	Intellectual Property	The following term shall apply (amendment): Not Used

B. THE GOODS

B1 Basis of the Contract

- B1.1 In consideration of the Supplier performing its obligations under the Contract the Authority shall pay the Supplier the Price in accordance with clause C1.
- B1.2 The terms and conditions contained in the Contract apply to the exclusion of any other terms and conditions the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

B2 Samples

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

B3 Delivery

- B3.1 Unless otherwise stated in the Specification, if the Goods are delivered by the Supplier, delivery is completed when the Goods are signed for by the Authority. If the Goods are collected by the Authority, the point of delivery is when the Goods are loaded on the Authority's vehicle.
- B3.2 Except where otherwise provided in the Contract, delivery includes the unloading, stacking or installation of the Goods by the Staff or the Supplier's suppliers or carriers at such place as the Authority or duly authorised person reasonably directs.
- B3.3 The Authority is deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with clause B4.7.
- B3.4 The issue by the Authority of a receipt note for delivery of the Goods does not constitute any acknowledgement of the condition, quantity or nature of those Goods or the Authority's acceptance of them.
- B3.5 Any access to the Premises and any labour and equipment provided by the Authority in connection with delivery is provided without acceptance by the Authority of any liability whatsoever to the extent permitted by law.
- B3.6 Where access to the Premises is necessary in connection with delivery or installation of the Goods, the Supplier and its Sub-Contractors shall at all times comply with the security requirements of the Authority.
- B3.7 The Authority is under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- B3.8 The Authority is under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Authority elects not to accept such over-delivered Goods it shall give notice to the Supplier to remove them within 5 Working Days and to refund to the Authority any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Authority may dispose of such Goods and charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods remains with the Supplier unless they are accepted by the Authority.
- B3.9 Unless expressly agreed to the contrary, the Authority shall not accept delivery by instalments. If the Authority specifies or agrees to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Authority, entitle the Authority to terminate the whole of any unfulfilled part of the Contract without further liability to the Authority.
- B3.10 Timely supply of the Goods is of the essence of the Contract, including in relation to commencing the supply of the Goods within the time agreed or on a specified date. If the Supplier fails to deliver the Goods within the time promised or specified in the Specification, the Authority is released from any obligation to accept and pay for the Goods and may terminate the Contract, in either case without prejudice to any other rights and remedies of the Authority.

- B3.11 If, in delivering the Goods, the Supplier is required to visit Authority Premises which are prisons, the Supplier shall comply with Schedule 7.

B4 Quality

- B4.1 The Supplier shall perform its obligations under the Contract:
- (a) with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
 - (b) in accordance with Good Industry Practice; and
 - (c) in compliance with all applicable Laws.
- B4.2 The Supplier shall ensure the Goods:
- (a) correspond with their description;
 - (b) conform with the Specification;
 - (c) conform, if applicable, with any sample which has been Approved;
 - (d) operate in accordance with the relevant technical specifications;
 - (e) be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
 - (f) conform in all respects with all applicable Laws; and
 - (g) 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 Supplier by the Authority.
- B4.3 The Authority may inspect and test the Goods at any time on reasonable notice. The Supplier shall provide at its own cost all such facilities as the Authority may reasonably require for such inspection and testing.
- B4.4 If, following such inspection or testing, the Authority considers that the Goods do not conform or are unlikely to conform with the Supplier's undertakings in clauses B4.1 and B4.2, the Authority may enforce one or more of its rights set out in clause B4.7.
- B4.5 Notwithstanding any inspection or testing, the Supplier remains fully responsible for the Goods and any inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Authority may conduct further inspections and tests after the Supplier has carried out its remedial actions.
- B4.6 If reasonably requested to do so by the Authority, the Supplier shall co-ordinate its activities in supplying the Goods with those of the Authority and other contractors engaged by the Authority.
- B4.7 Pursuant to clause B4.4, the Authority may by notice to the Supplier:

- (a) reject any of the Goods;
- (b) have the Goods promptly, free of charge and in any event within 5 Working Days, either repaired by the Supplier or replaced by the Supplier 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; and/or
- (c) treat the Contract as discharged by the Supplier's breach and obtain a refund (if payment for the Goods has already been made) from the Supplier in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Authority in obtaining other goods in replacement.

B4.8 Any Goods rejected or returned by the Authority as set out in clause B4.7 shall be returned to the Supplier at the Supplier's risk and expense.

B4.9 The Supplier 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 within such period or within 25 Working Days thereafter gives notice to the Supplier of any defect in any of the Goods as may have arisen during such period under proper and normal use, the Supplier 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.

B4.10 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

B5 Risk and Ownership

B5.1 Subject to clauses B4.4 and B4.5, risk in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F1 (Contract Performance)), pass to the Authority on completion of delivery.

B5.2 Title in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F1), pass to the Authority on completion of delivery (or payment, if earlier).

B6 Non-Delivery

B6.1 On dispatch of any consignment of the Goods the Supplier shall send the Authority a note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume.

B6.2 If the Goods are not delivered to the Authority on the agreed date for delivery (the "**Delivery Date**"), the Authority shall, within 10 Working Days of the Delivery Date, give notice to the Supplier that the Goods have not been delivered and may:

- (a) request the Supplier to deliver substitute Goods free of charge by a date specified by the Authority;
 - (b) invoice the Supplier for a sum, by way of liquidated damages for each day that the Goods are not delivered after the Delivery Date until the date the Goods are delivered, which is equal to the percentage of the Price set out in the Specification ("**Liquidated Damages**"); or
 - (c) terminate the Contract with immediate effect.
- B6.3 The Parties acknowledge and confirm that the calculation of Liquidated Damages represents a genuine pre-estimate of loss.
- B6.4 If the Supplier pays a Liquidated Damages invoice pursuant to clause B6.2(b), the Authority shall not enforce any other remedy for any loss or damages incurred by the Authority in respect of the same failure to deliver the Goods by the Delivery Date.

B7 Labelling and Packaging

- B7.1 The Supplier shall ensure that the Goods are labelled and packaged in accordance with the Contract.
- B7.2 The Supplier shall comply with the Packaging & Packaging Waste Directive (94/62/EC), implemented in the UK by the Packaging (Essential Requirements) Regulations 2015 (SI 2015/1640). The container in which the Goods are held shall be labelled with the Supplier's name, the net, gross and tare weights, and contain a description of its contents. All containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.
- B7.3 The Supplier shall remove and dispose of all packaging materials from the Premises within the period specified by the Authority and at no cost to the Authority.
- B7.4 If no period for collection and disposal is specified by the Authority, the Supplier shall collect the packaging from the Premises no later than 10 Working Days from the date of delivery of the Goods. The Authority may dispose of any packaging materials which have not been collected by the Supplier within those 10 Working Days or such other period specified by the Authority for collection. The Supplier is responsible for the payment of any costs incurred by the Authority in connection with its collection and disposal of that packaging material.
- B7.5 The Supplier 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) review packaging specifications periodically to ensure that no unnecessary limitations on the use of recycled materials exist; and
- (e) if requested, 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.

B8 Training

If included in the Specification, the Price includes the cost of instruction of the Authority's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements detailed in the Specification.

B9 Equipment

- B9.1 The Supplier shall provide all the Equipment and resource necessary for the supply of the Goods.
- B9.2 The Supplier shall not deliver any Equipment to, or begin any work on, the Premises without Approval.
- B9.3 All Equipment brought onto the Premises is at the Supplier's own risk and the Authority has no liability for any loss of or damage to any Equipment unless the Supplier demonstrates that such loss or damage was caused or contributed to by the Authority's Default. The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.
- B9.4 Equipment brought onto the Premises remains the property of the Supplier.
- B9.5 If the cost of any Equipment is reimbursed to the Supplier such Equipment shall be the property of the Authority and shall on request be delivered to the Authority as directed by the Authority. The Supplier will keep a full and accurate inventory of such Equipment and will deliver that inventory to the Authority on request and on completion of delivery of the Goods.
- B9.6 The Supplier shall maintain all Equipment in a safe, serviceable and clean condition.
- B9.7 The Supplier shall, at the Authority's written request, at its own cost and as soon as reasonably practicable:
 - (a) remove immediately from the Premises Equipment which is, in the Authority's opinion, hazardous, noxious or not supplied in accordance with the Contract; and

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

B9.8 Within 20 Working Days of the end of the Term, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Goods and shall leave the Premises in a clean, safe and tidy condition. The Supplier shall make good any damage to those Premises and any fixtures and fitting in the Premises which is caused by the Supplier or Staff.

B10 Staff

B10.1 The Authority may, by notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:

(a) any member of the Staff; or

(b) any person employed or engaged by any member of the Staff

whose admission or continued presence would, in the Authority's reasonable opinion, be undesirable.

B10.2 The Supplier shall comply with all security requirements of the Authority while on the Authority's Premises, and ensure that all Staff comply with such requirements.

B10.3 The Supplier shall not, and shall procure that all Staff shall not, take photographs on the Authority's Premises without Approval.

B10.4 At the Authority's written request, the Supplier shall, at its own cost, provide a list of the names, addresses, national insurance numbers and immigration status of all people who may require admission to the Authority's Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

B10.5 The Supplier shall ensure that all Staff who have access to the Authority's Premises, the Authority System or the Authority Data have been cleared in accordance with the BPSS.

B10.6 The Supplier shall co-operate with any investigation relating to security carried out by the Authority or on behalf of the Authority and, at the Authority's request:

(a) use reasonable endeavours to make available any Staff requested by the Authority to attend an interview for the purpose of an investigation; and

(b) provide documents, records or other material in whatever form which the Authority may reasonably request or which may be requested on the Authority's behalf, for the purposes of an investigation.

B11 Due Diligence

Save as the Authority may otherwise direct, the Supplier is deemed to have inspected the Premises before submitting its Tender and to have completed

due diligence in relation to all matters connected with the performance of its obligations under the Contract.

B12 Licence to Occupy

- B12.1 Any land or Premises made available from time to time to the Supplier by the Authority in connection with the Contract are on a non-exclusive licence basis free of charge and are used by the Supplier solely for the purpose of performing its obligations under the Contract. The Supplier has the use of such land or Premises as licensee and shall vacate the same on termination of the Contract.
- B12.2 The Supplier shall limit access to the land or Premises to such Staff as is necessary for it to perform its obligations under the Contract and the Supplier shall co-operate (and ensure that its Staff co-operate) with other persons working concurrently on such land or Premises as the Authority may reasonably request.
- B12.3 If the Supplier requires modifications to the Authority's Premises such modifications are subject to Approval and shall be carried out by the Authority at the Supplier's cost. The Authority shall undertake Approved modification work without undue delay.
- B12.4 The Supplier shall (and shall ensure that any Staff on the Authority's Premises shall) observe and comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when on the Authority's Premises as determined by the Authority.
- B12.5 The Contract does not create a tenancy of any nature in favour of the Supplier or its Staff and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority may use the Premises owned or occupied by it in any manner it sees fit.

B13 Property

- B13.1 All Property is and remains the property of the Authority and the Supplier irrevocably licenses the Authority and its agents to enter any Premises of the Supplier during normal business hours on reasonable notice to recover any such Property.
- B13.2 The Property is deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Authority otherwise within 5 Working Days of receipt.
- B13.3 The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without Approval.
- B13.4 The Supplier shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Goods, in accordance with the Authority's reasonable security requirements as required from time to time.

- B13.5 The Supplier is liable for all loss of or damage to the Property, unless such loss or damage was caused by the Authority's negligence. The Supplier shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

B14 Offers of Employment

- B14.1 Neither Party shall, directly or indirectly, solicit or procure (otherwise than by general advertising or under TUPE, any employees or contractors (including the Staff) of the other Party who are directly employed or engaged in connection with the provision of the Goods while such persons are employed or engaged and for a period of 6 Months thereafter.
- B14.2 If either Party breaches the clause B14.1, it shall pay the other Party a sum equivalent to 20% of the annual base salary payable by the Party in breach in respect of the first year of person's employment.
- B14.3 The Parties agree that the sum specified in clause B14.2 is a reasonable pre-estimate of the loss and damage which the party not in breach would suffer if there was a breach of clause B14.1

C PAYMENT

C1 Payment and VAT

- C1.1 The Supplier shall submit invoices to the Authority in accordance with Schedule 2.
- C1.2 The Authority shall, in addition to the Price and following Receipt of a Valid Invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Goods supplied in accordance with the Contract.
- C1.3 The Supplier shall add VAT to the Price at the prevailing rate as applicable and show the amount of VAT payable separately on all invoices as an extra charge. If the Supplier fails to show VAT on an invoice, the Authority is not, at any later date, liable to pay the Supplier any additional VAT.
- C1.4 All Supplier invoices shall be expressed in sterling or any other currency which is Approved.
- C1.5 A Valid Invoice is an invoice which includes:
- (a) the Supplier's full name, address and title of the Contract;
 - (b) a description and quantity of the Goods delivered including batch numbers; and
 - (c) the Purchase Order number.
- C1.6 The Authority shall not pay the Supplier's overhead costs unless Approved and overhead costs include, without limitation: facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Goods.

- C1.7 If Schedule 2 expressly provides that the Authority may be charged for plant which is on standby then if plant was waiting to be transferred between Premises or if the Authority has instructed that the plant is retained on the Premises then a standby charge of 60% of agreed rates may be made in respect of such relevant periods if supported by timesheets.
- C1.8 The Authority shall not pay a stand-by rate if plant is on standby because no work was being carried out on the Premises at that time or no operator or other relevant staff were available (unless the standby is because the Supplier is awaiting licensing of the Premises on the Authority's instructions).
- C1.9 The Authority shall not pay for plant or equipment which is stood down during any notice period pursuant to clauses H1, H2 and/or H3 and the Supplier shall mitigate such costs as far as is reasonably possible, for example, by reutilising Staff, plant, materials and services on other contracts.
- C1.10 The Supplier may claim expenses only if they are clearly identified, supported by original receipts and Approved.
- C1.11 If the Authority pays the Supplier prior to the submission of a Valid Invoice this payment is on account of and deductible from the next payment to be made.
- C1.12 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Authority may recover this payment against future invoices raised or directly from the Supplier. All payments made by the Authority to the Supplier are on an interim basis pending final resolution of an account with the Supplier in accordance with the terms of this clause C1.
- C1.13 The Authority shall pay all sums due to the Supplier within 30 days of Receipt of a Valid Invoice. Valid Invoices should be submitted for payment to the following address:
MoJ-finance-ap-enquiries@sscl.gse.gov.uk
- C1.14 Any late payment of undisputed invoices by the Authority will be subject to interest at the rate of a maximum of 3% above the base rate from time to time of Barclays Bank.
- C1.15 The Supplier shall ensure that a provision is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice.
- C1.16 The Supplier indemnifies the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this clause C1.16 shall be paid by the Supplier to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.

C1.17 The Supplier shall not suspend delivery of the Goods unless the Supplier is entitled to terminate the Contract under clause H2.3 for failure to pay undisputed sums of money.

C1.18 The Authority shall not pay an invoice which is not a Valid Invoice.

C2 Recovery of Sums Due

C2.1 If under the Contract any sum of money is recoverable from or payable by the Supplier to the Authority (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier from the Authority under the Contract or under any other agreement with the Authority or the Crown.

C2.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, is a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C2.3 The Supplier shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

C2.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C3 Price During Extension

Subject to Schedule 2 and clause F4 (Change), the Price applies for the Initial Term and until the end of any Extension or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

D. STATUTORY OBLIGATIONS

D1 Fraud and Bribery

D1.1 The Supplier 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 Supplier shall not during the Term:

- (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, contractors, 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 Supplier shall, during the Term:

- (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 Supplier 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 Supplier notifies the Authority pursuant to clause D1.4, the Supplier 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 Supplier is in Default under clauses D1.1 and/or D1.2, the Authority may by notice:

- (a) require the Supplier 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 terminates).

D2 Equality

D2.1 The Supplier 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 Supplier 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 Health and Safety

D3.1 The Supplier 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.

D3.2 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 Supplier shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

D4 Modern Slavery Act

D4.1 The Supplier shall, and procure that each of its Sub-Contractors shall, comply with:

- (a) the Modern Slavery Act 2015 ("**Slavery Act**"); and
- (b) the Authority's anti-slavery policy as provided to the Supplier from time to time ("**Anti-slavery Policy**").

D4.2 The Supplier shall:

- (a) implement due diligence procedures for its Sub-Contractors and other participants in its supply chains, to ensure that there is no slavery or trafficking in its supply chains;

- (b) respond promptly to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;
- (c) prepare and deliver to the Authority each year, an annual slavery and trafficking report setting out the steps it has taken to ensure that slavery and trafficking is not taking place in any of its supply chains or in any part of its business;
- (d) maintain a complete set of records to trace the supply chain of all Goods provided to the Authority in connection with the Contract; and
- (e) implement a system of training for its employees to ensure compliance with the Slavery Act.

D4.3 The Supplier represents, warrants and undertakes during the Term that:

- (a) it conducts its business in a manner consistent with all applicable laws, regulations and codes including, the Slavery Act and all analogous legislation in place in any part of the world;
- (b) its responses to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time are complete and accurate;
- (c) neither the Supplier nor any of its Staff or any other persons associated with it:
 - i) has been convicted of any offence involving slavery and trafficking; or
 - ii) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence in connection with slavery and trafficking.

D4.4 The Supplier shall notify the Authority as soon as it becomes aware of:

- (a) any breach, or potential breach, of the Anti-Slavery Policy; or
- (b) any actual or suspected slavery or trafficking in a supply chain which is connected with the Contract.

D4.5 If the Supplier notifies the Authority pursuant to clause D4.4, it 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 in accordance with the Contract.

D4.6 If the Supplier is in Default under clauses D4.2 or D4.3 the Authority may by notice:

- (a) require the Supplier to remove from performance of the Contract any Staff or other persons associated with it whose acts or omissions have caused the Default; or
- (b) immediately terminate the Contract.

E PROTECTION OF INFORMATION

E1 Authority Data

E1.1 The Supplier shall:

- (a) not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under the Contract or as otherwise Approved;
- (b) preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data;
- (c) not delete or remove any proprietary notices contained within or relating to the Authority Data;
- (d) to the extent that Authority Data is held and/or processed by the Supplier, supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification;
- (e) perform secure back-ups of all Authority Data and ensure that up-to-date back-ups are stored securely off-site. The Supplier shall ensure that such back-ups are made available to the Authority immediately upon request;
- (f) ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy Framework;
- (g) identify, and disclose to the Authority on request those members of Staff with access to or who are involved in handling Authority Data;
- (h) on request, give the Authority details of its policy for reporting, managing and recovering from information risk incidents, including losses of data, and its procedures for reducing risk;
- (i) notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take if it has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason; and
- (j) comply with Schedule 6 (Security Requirements and Policy).

E1.3 If Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:

- (a) require the Supplier (at the Supplier's cost) to restore or procure the restoration of Authority Data and the Supplier shall do so promptly; and/or
- (b) itself restore or procure the restoration of Authority Data, and be repaid by the Supplier any reasonable costs incurred in doing so.

E2 Official Secrets Acts and Finance Act

E2.1 The Supplier shall comply with:

- (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 allowed 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 Supplier 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 Supplier shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in a form approved by the Authority. The Supplier 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 Supplier 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 Supplier shall ensure that Staff, professional advisors and consultants are aware of the Supplier's confidentiality obligations under the Contract.
- E3.5 The Supplier may disclose the Authority's Confidential Information only to Staff who are directly involved in supplying the Goods 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 Supplier 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 the 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 prevents the Authority disclosing any Confidential Information obtained from the Supplier:

- (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 Parliament and Parliamentary committees;
- (d) to any Crown Body or any Contracting Authority and the Supplier 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; or
- (e) to any consultant, contractor or other person engaged by the Authority

provided that in disclosing information under clauses E3.8 (d) and (e) 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 prevents 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 reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed

pursuant to clause E3.6 is made aware of the Authority's obligations of confidentiality.

- E3.11 If the Supplier does not comply with clauses E3.1 to E3.8 the Authority may terminate the Contract immediately on notice.
- E3.12 To ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Goods, the Supplier shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- E3.13 The Supplier shall:
- (a) 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;
 - (b) use best endeavours to recover such Confidential Information or data however it may be recorded;
 - (c) co-operate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data; and
 - (d) at its own expense, alter any security systems at any time during the Term at the Authority's request if the Authority reasonably believes the Supplier has failed to comply with clause E3.12.

E4 Freedom of Information

- E4.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.
- E4.2 The Supplier 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 and shall:
- (a) give the Authority a copy of all Information in its possession or control 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 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, without the written consent of the other Party.

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

E6 Intellectual Property Rights

- E6.1 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 Supplier 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 Supplier 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 Supplier of its obligations under the Contract.

- E6.2 The Supplier 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. 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 Supplier; and
- (b) to Her Majesty the Queen, with full title guarantee, all Copyright and Database Rights which may subsist in the IP Materials

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

- E6.3 The Supplier 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 Supplier or to any other third party supplying goods and/or services 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 Term, indemnify and keep indemnified the Authority and Indemnified Persons from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority and Indemnified Persons may suffer or incur as a result of or in connection with any breach of this clause E6.3, 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 Supplier under any provision of the Contract.

E6.4 The Authority shall notify the Supplier in writing of any claim or demand brought against the Authority or Indemnified Person for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Supplier to the Authority.

E6.5 The Supplier 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 Supplier or Indemnified Person) arising from the performance of the Supplier's obligations under the Contract ("**Third Party IP Claim**"), provided that the Supplier 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).

E6.6 The Authority shall, at the request of the Supplier, afford to the Supplier all reasonable assistance for the purpose of contesting any Third-Party IP Claim and the Supplier shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Supplier is not required to indemnify the Authority under this clause E6.6 in relation to any costs and expenses to the extent

that such arise directly from the matters referred to in clauses E6.3 (d) i) and ii).

E6.7 The Authority shall not, without the Supplier's consent, make any admissions which may be prejudicial to the defence or settlement of any Third-Party IP Claim.

E6.8 If any Third-Party IP Claim is made or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Authority and any relevant Indemnified Person, 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 E6.3 (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 goods 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 Supplier is unable to comply with clauses E6.8 (a) or (b) within 20 Working Days of receipt by the Authority of the Supplier's notification the Authority may terminate the Contract immediately by notice to the Supplier.

E6.9 The Supplier grants to the Authority and, if requested by the Authority, to a Replacement Supplier, a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Supplier owned or developed prior to the Commencement Date and which the Authority (or the Replacement Supplier) reasonably requires in order for the Authority to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Goods).

E7 Audit

E7.1 The Supplier shall:

- (a) keep and maintain until 6 years after the end of the Term, 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;
- (b) 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;
- (c) make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Supplier in relation to the Goods;

(d) allow authorised representatives of the Authority and/or the National Audit Office to examine the Supplier's records and documents relating to the Contract and provide such copies and oral or written explanations as may reasonably be required; and

(e) allow 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 Supplier shall provide such explanations as are reasonably required for these purposes.

E8 Tax Compliance

E8.1 If, during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier 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.

E8.2 If the Supplier or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Supplier 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 Supplier or any Staff.

F. CONTROL OF THE CONTRACT

F1 Contract Performance

F1.1 The Supplier shall immediately inform the Authority if any of the Goods are not being or are unable to be supplied, the reasons for non-supply, any corrective action and the date by which that action will be completed.

F1.2 At or around 6 Months from the Commencement Date and each anniversary of the Commencement Date thereafter, the Authority may carry out a review

of the performance of the Supplier (a “**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):

- a) the Supplier’s delivery of the Goods;
- b) the Supplier’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;
- c) a review of future requirements in relation to the Goods; and
- d) progress against key milestones.

F1.3 The Supplier shall provide at its own cost any assistance reasonably required by the Authority to perform Reviews including the provision of data and information.

F1.4 The Authority may produce a report (a “**Review Report**”) of the results of each 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 Supplier’s obligations under the Contract.

F1.5 The Authority shall give the Supplier a copy of the Review Report (if applicable). The Authority shall consider any Supplier comments and may produce a revised Review Report.

F1.6 The Supplier shall, within 10 Working Days of receipt of the Review Report (revised as appropriate) provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified by the Review Report.

F1.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Supplier’s failure to meet its obligations under the Contract identified by the Review Report, or those which result from the Supplier’s failure to meet the Authority’s expectations notified to the Supplier or of which the Supplier ought reasonably to have been aware) shall be implemented at no extra cost to the Authority.

F2 Remedies

F2.1 If the Authority reasonably believes the Supplier 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, procure the supply of all or part of the Goods until such time as the Supplier has demonstrated to the Authority’s reasonable satisfaction that the Supplier can 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 procure a third party to supply those Goods;

- (c) withhold or reduce payments to the Supplier in such amount as the Authority reasonably deems appropriate in each particular case; and/or
- (d) terminate the Contract in accordance with clause H2.

F2.2 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Authority may charge the Supplier for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Goods by a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for those Goods.

F2.3 If the Authority reasonably believes the Supplier has failed to supply all or some of the Goods in accordance with the Contract, professional or Good 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 Supplier notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.

F2.4 If the Supplier has been notified of a failure in accordance with clause F2.3 the Authority may:

- (a) direct the Supplier 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 Supplier in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.

F2.5 If the Supplier has been notified of a failure in accordance with clause F2.3, 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 F2.5 and the progress of those measures until resolved to the satisfaction of the Authority.

F2.6 If, having been notified of any failure, the Supplier does not remedy it in accordance with clause F2.5 in 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 Supplier.

F3 Transfer and Sub-Contracting

- F3.1 Except where both clauses F3.6 and F3.7 apply, the Supplier 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 actions shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract does not relieve the Supplier of any of its obligations or duties under the Contract.
- F3.2 The Supplier is responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Supplier shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Goods fully in accordance with the Contract.
- F3.3 The Supplier shall ensure that Sub-Contractors retain all records relating to the Goods for at least 6 years from the date of their creation and make them available to the Authority on request in accordance with clause E8 (Audit). If any Sub-Contractor 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 Supplier on the basis of such documents or work carried out by the Sub-Contractor.
- F3.4 If the Authority has consented to the award of a Sub-Contract, the Supplier shall ensure that:
- (a) the Sub-Contract contains a right for the Supplier to terminate the Sub-Contract if the relevant Sub-Contractor does not comply with its legal obligations in environmental, social or labour law;
 - (b) the Sub-Contractor includes a provision having the same effect as set out in clause F3.4 (a) in any Sub-Contract which it awards; and
 - (c) copies of each Sub-Contract are sent to the Authority immediately after their execution.
- F3.5 If the Authority believes there are:
- (a) compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Supplier 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 Supplier to replace or not appoint the Sub-Contractor and the Supplier shall comply with such requirement.
- F3.6 Notwithstanding clause F3.1, the Supplier may assign to a third party (the “**Assignee**”) the right to receive payment of the Price or any part thereof due to the Supplier (including any interest which the Authority incurs under clause C1 (Payment and VAT)). Any assignment under this clause F3.6 is subject to:

- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C2 (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 F3.7 and F3.8.
- F3.7 If the Supplier assigns the right to receive the Price under clause F3.6, the Supplier or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F3.8 The Supplier shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority can make payment.
- F3.9 Clause C1 continues to apply in all other respects after the assignment and shall not be amended without Approval.
- F3.10 Subject to clause F3.11, 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 Supplier's obligations under the Contract.
- F3.11 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F3.12, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.
- F3.12 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F3.10 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 are available to the Supplier 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 Supplier.
- F3.13 The Authority may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier'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 Supplier'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.

- F3.14 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 Contract.

F4 Change

- F4.1 If, after the Commencement Date, the Authority's requirements change, the Authority may request a Change subject to the terms of this clause F4.
- F4.2 The Authority may request a Change by notifying the Supplier in writing of the Change and giving the Supplier sufficient information to assess the extent of the Change and consider whether any change to the Price is required in order to implement the Change within a reasonable time limit specified by the Authority. If the Supplier accepts the Change it shall confirm it in writing.
- F4.3 If the Supplier is unable to accept the Change or where the Parties are unable to agree a change to the Price, the Authority may:
- (a) allow the Supplier to fulfil its obligations under the Contract without the Change; or
 - (b) terminate the Contract immediately except where the Supplier has already delivered all or some of the Goods or where the Supplier 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).
- F4.4 A Change takes effect only when it is recorded in a CCN validly executed by both Parties.
- F4.5 The Supplier is deemed to warrant and represent that the CCN has been executed by a duly authorised representative of the Supplier in addition to the warranties and representations set out in clause G2.
- F4.6 Clauses F4.4 and F4.5 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 Change in order to address the emergency. In an emergency, Changes may be approved by a different representative of the Authority. However, the Authorised Representative may review such a Change and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Change.

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;
 - (d) any breach of clauses D1, E1, E3;
 - (e) any breach of Schedule 6; or
 - (f) any liability to the extent it cannot be limited or excluded by Law.
- G1.2 Subject to clauses G1.3 and G1.5, the Supplier indemnifies the Authority 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 Goods or the performance or non-performance by the Supplier of its obligations under the Contract or the presence of the Supplier 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 Supplier, or any other loss which is caused directly by any act or omission of the Supplier.
- G1.3 Subject to clause G1.1 the Supplier's aggregate liability in respect of the Contract does not exceed £REDACTED.
- G1.4 Subject to clause G1.1 the Authority's aggregate liability in respect of the Contract does not exceed the Price payable in the previous calendar year of the Contract.
- G1.5 The Supplier is 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.
- G1.6 The Authority may recover from the Supplier the following losses incurred by the Authority to the extent they arise as a result of a Default by the Supplier:
- (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 Supplier for the remainder of the Term and or replacement deliverables which shall include any incremental costs associated with the Replacement Supplier 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.
- G1.7 Subject to clauses G1.1 and G1.6, neither Party is 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.
- G1.8 Unless otherwise specified by the Authority, the Supplier shall, with effect from the Commencement Date for such period as necessary to enable the Supplier 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 Supplier, arising out of the Supplier's performance of its obligations under the Contract including:
 - (a) if required by the Authority, appropriate, professional indemnity insurance in the sum of not less than £REDACTED for any advice given by the Supplier to the Authority;
 - (b) cover for death or personal injury, loss of or damage to property or any other loss; and
 - (c) employer's liability insurance in respect of Staff.

Such insurance policies shall be maintained for the duration of the Term and for a minimum of 6 years following the end of the Term.
- G1.9 The Supplier 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 Supplier does not have and maintain the insurances required by the Contract, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- G1.11 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.
- G1.12 The Supplier 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 Supplier, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Supplier is an insured, a co-insured or additional insured person.

G2 Warranties and Representations

G2.1 The Supplier warrants and represents on the Commencement Date and for the Term 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 Supplier;
- (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 Supplier 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 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 (or, to the best of its knowledge, are threatened) for the winding up of the Supplier 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 Supplier'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 Supplier 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 if the Supplier 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.

G2.2 The Supplier confirms that in entering into the Contract it is not relying on any statements, warranties or representations given or made (whether negligently or innocently or whether express or implied), or any acts or omissions by or on behalf of the Authority in connection with the subject matter of the Contract except those expressly set out in the Contract and the Supplier hereby waives and releases the Authority in respect thereof absolutely.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Insolvency and Change of Control

- H1.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier if the Supplier is a company and in respect of the Supplier:
- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
 - (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 Supplier if the Supplier 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 Supplier’s creditors;
- (b) a petition is presented and not dismissed within 14 days or order made for the Supplier’s bankruptcy;
- (c) a receiver, or similar officer is appointed over the whole or any part of the Supplier’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
- (d) he 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 Supplier’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 Supplier shall notify the Authority immediately following a merger, take-over, change of control, change of name or status including where the Supplier 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 Supplier 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 is not 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 Supplier if the Supplier 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) 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
- (c) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (d) 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
- (e) 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;
- (f) any event similar to those listed in clauses H1.4 (a) to (e) 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 Supplier if the Supplier 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) 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;
- (c) 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;

- (d) 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;
- (e) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (f) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (g) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in clauses H1.5 (a) to (g) occurs under the law of any other jurisdiction.

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

H2 Default

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

- (a) the Supplier has not remedied the Default to the satisfaction of the Authority within 20 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 Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Supplier is 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 Supplier undisputed sums of money when due, the Supplier 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 Supplier may terminate the Contract 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 C2.1 or to a Force Majeure Event.

H3 Termination on Notice

The Authority may terminate the Contract at any time by giving 90 days' notice to the Supplier.

H4 Other Grounds

H4.1 The Authority may terminate the Contract 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 Supplier 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 Supplier 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 Supplier has not, in supplying the Goods, 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 clause H2 and makes other arrangements for the supply of the Goods the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term.

H5.2 If the Contract is terminated under clause H2 the Authority shall make no further payments to the Supplier (for Goods supplied by the Supplier 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.

H5.3 If the Authority terminates the Contract under clauses H3 or H4 the Authority shall make no further payments to the Supplier except for Goods supplied by the Supplier 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 prejudices the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract does not affect the continuing rights, remedies or obligations of the Authority or the Supplier under clauses

C1 (Payment and VAT), C2 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Official Secrets Acts and Finance Act), E3 (Confidential Information), E4 (Freedom of Information), E6 (Intellectual Property Rights), E7 (Audit), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery), H8 (Retendering and Handover), H9 (Exit Management), H10 (Knowledge Retention), I6 (Remedies Cumulative), and I12 (Governing Law and Jurisdiction).

H6 Disruption

- H6.1 The Supplier 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 contractor employed by the Authority.
- H6.2 The Supplier 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 Staff, the Supplier shall seek Approval for its proposals to continue to perform its obligations under the Contract.
- H6.4 If the Supplier's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Authority acting reasonably, the Contract may be terminated with immediate effect by the Authority.
- H6.5 If the Supplier is unable to supply the Goods owing to disruption of the Authority's normal business, the Supplier may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

H7 Recovery

- H7.1 On termination of the Contract for any reason, the Supplier shall at its cost:
 - (a) immediately return to the Authority all Confidential Information 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 Supplier in good working order;
 - (c) immediately vacate any Authority Premises occupied by the Supplier;
 - (d) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Goods to the Replacement Supplier; and
 - (e) promptly provide all information concerning the supply of the Goods reasonably requested by the Authority for the purposes of adequately understanding the manner in which the Goods have been provided

and/or for the purpose of allowing the Authority and/or the Replacement Supplier to conduct due diligence.

- H7.2 If the Supplier does not comply with clauses H7.1 (a) and (b), the Authority may recover possession thereof and the Supplier grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its 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 Supplier 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 Supplier indemnifies 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 Supplier is required to provide under clause H8.1.
- H8.5 The Supplier shall allow access to the Premises in the presence of an 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 Supplier's Premises for the purposes of clause H8.5, the Authority shall give the Supplier 7 days' notice of a proposed visit and a list of all persons who will be visiting. Their attendance is subject to compliance with the Supplier's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- H8.7 The Supplier shall co-operate fully with the Authority during any handover at the end of the Contract including 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 Supplier 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 supply of the Goods. 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 On termination of the Contract the Supplier shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Supplier in accordance with the procedure set out in clauses H9.2 to H9.5.
- H9.2 If the Authority requires a continuation of supply of the Goods on expiry or termination of the Contract, by engaging a third party to supply them, the Supplier 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 supply without disruption to routine operational requirements.
- H9.3 The following commercial approach shall apply to the transfer of the supply of Goods if the Supplier:
- (a) does not have to use resources in addition to those normally used to deliver 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 Change to the Price based on the Supplier's rates either set out in Schedule 2 or forming the basis for the Price.
- H9.4 When requested to do so by the Authority, the Supplier shall deliver to the Authority details of all licences for software used in supplying the Goods including the software licence agreements.
- H9.5 Within one Month of receiving the software licence information described in clause H9.4, the Authority shall notify the Supplier of the licences it wishes to be transferred and the Supplier shall provide for the approval of the Authority a plan for licence transfer.

H10 Knowledge Retention

The Supplier shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Supplier 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 Supplier 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 Supplier shall comply with the Authority's request for information no later than 15 Working Days from the date that that request was made.

I GENERAL

I1 Dispute Resolution

- I1.1 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 Supplier and the commercial director of the Authority.
- I1.2 Nothing in this dispute resolution procedure prevents the Parties 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.
- I1.3 If the dispute cannot be resolved by the Parties pursuant to clause I1.1 either Party may refer it to mediation pursuant to the procedure set out in clause I1.5.
- I1.4 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 Supplier and Staff shall comply fully with the requirements of the Contract at all times.
- I1.5 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 of 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 I1.6.

I1.6 Subject to clause I1.2, the Parties shall not institute court proceedings until the procedures set out in clauses I1.1 and I1.3 have been completed save that:

- (a) the Authority may at any time before court proceedings are commenced, serve a notice on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with clause I1.7;
- (b) if the Supplier intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority has 21 days following receipt of such notice to serve a reply on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with clause I1.7; and
- (c) the Supplier may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause I1.7, to which the Authority may consent as it sees fit.

I1.7 If any arbitration proceedings are commenced pursuant to clause I1.6:

- (a) the arbitration is governed by the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Supplier (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 I1.7 (b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator is 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 I1.7 (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.

I2 Force Majeure

- I2.1 Subject to this clause I2, a Party may claim relief under this clause I2 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 Supplier 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 Supplier.
- I2.2 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.
- I2.3 If the Supplier is the Affected Party, it is not entitled to claim relief under this clause I2 to the extent that consequences of the relevant Force Majeure Event:
 - (a) are capable of being mitigated but the Supplier 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.
- I2.4 Subject to clause I2.5, 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 supply of the Goods affected by the Force Majeure Event.
- I2.5 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 Supplier 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.
- I2.6 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 is not 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 is liable for any Default arising as a result of such failure;
 - (b) the Supplier 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.
- 12.7 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.
- 12.8 Relief from liability for the Affected Party under this clause I2 ends 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 is not dependent on the serving of a notice under clause I2.7.

I3 Notices and Communications

- 13.1 Subject to clause I3.3, 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.
- 13.2 If it is not returned as undelivered a notice served in:
- (a) a letter is deemed to have been received 2 Working Days after the day it was sent; and
 - (b) 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.
- 13.3 Notices pursuant to clauses I2 (Force Majeure), I1 (Dispute Resolution) or to terminate the Contract or any part of the supply of Goods are valid only if served in a letter by hand, recorded delivery or special delivery.
- 13.4 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:

Contact Name: Szabina Hadfi

Address: Commercial and Contract Management Directorate (CCMD)
Harcourt House, Chancellor Court, 21 The Calls, Leeds, LS2 7EH

Email: MoJProcurementOperationalGoodsandServices@justice.gsi.gov.uk

(b) For the Supplier:

[REDACTED]

Address:
ForFarmers UK Ltd
3 Shed
The Grain Stores
Tilstock Airfield
Prees Heath
Whitchurch
Shropshire
SY13 3JX

Email: [REDACTED]

I4 Conflicts of Interest

- I4.1 The Supplier shall take appropriate steps to ensure that neither the Supplier 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 Supplier and the duties owed to the Authority under the Contract. The Supplier will notify the Authority immediately giving full particulars of any such conflict of interest which may arise.
- I4.2 The Authority may terminate the Contract immediately by notice and/or take or require the Supplier 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 Supplier and the duties owed to the Authority under the Contract. The actions of the Authority pursuant to this clause I4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

I5 Rights of Third Parties

- I5.1 Clause E7.3 confers benefits on persons named in it ("**Third Party Provisions**") and each person a "**Third Party Beneficiary**") other than the Parties which are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 ("**CRTPA**").
- I5.2 Subject to clause I5.1, a person who is not a Party has no right under the CRTPA to enforce 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.
- I5.3 No Third Party Beneficiary may enforce or take steps to enforce any Third Party Provision without Approval.
- I5.4 Any amendments to the Contract may be made by the Parties without the consent of any Third Party Beneficiary.

I6 Remedies Cumulative

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 are not an election of such remedy to the exclusion of other remedies.

I7 Waiver

- 17.1 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 do not constitute a waiver of that right or remedy and do not cause a diminution of the obligations established by the Contract.
- 17.2 No waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause I3 (Notices and Communications).
- 17.3 A waiver of any right or remedy arising from a breach of the Contract does not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

I8 Severability

If any part 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 part shall be severed and the remainder of the Contract shall continue in full effect as if the Contract had been executed with the invalid, illegal or unenforceable part eliminated.

I9 Entire Agreement

The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein and 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.

I10 Change in Law

- 110.1 The Supplier is neither relieved of its obligations to supply the Goods in accordance with the terms and conditions of the Contract nor entitled to an increase in the Price as the result of:
 - (a) a General Change in Law; or
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Goods is reasonably foreseeable at the Commencement Date.
- 110.2 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in clause I10.1(b)), the Supplier shall:

(a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including whether any:

(i) change is required to the Goods, the Price or the Contract;
and

(ii) relief from compliance with the Supplier's obligations is required;

(b) provide the Authority with evidence:

(i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors; and

(ii) as to how the Specific Change in Law has affected the cost of providing the Goods.

I10.3 Any variation in the Price or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in clause I10.1(b)) shall be implemented in accordance with clause F4.

I11 Counterparts

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

I12 Governing Law and Jurisdiction

Subject to clause I1 (Dispute Resolution) the Contract, including any matters arising out of or in connection with it, are governed by and interpreted in accordance with English Law and are subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction does not limit the right of the Authority to take proceedings against the Supplier in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction does not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

SCHEDULE 1 – SPECIFICATION

MINISTRY OF JUSTICE SPECIFICATION DOCUMENT

The Supply of Farm Animal Feed

SUMMARY

This document describes the requirement for the supply of Farm Animal Feed for use by the Ministry of Justice.

	Name	Signature	Date
Authors	Szabina Hadfi	Szabina Hadfi	September 2017
Approvers	Jason Errington (PSPI)	Jason Errington (PSPI)	23 August 2017
	Chris Coveney (PSPI)	Chris Coveney (PSPI)	12 October 2017

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1.0 INTRODUCTION

1.1 Overview

The Ministry of Justice (MoJ) works to protect the public and reduce re-offending, and to provide a more effective, transparent and responsive criminal justice system for victims and the public. It also provides fair and simple routes to civil and family justice.

The MoJ has responsibility for different parts of the justice system – the courts, prisons, probation services and attendance centres. It works in partnership with the other government departments and agencies to reform the criminal justice system, to serve the public and support the victims of crime.

In the HM Chief Inspector of Prisons for England and Wales Annual Report 2011–12 it states *'We expect that there should be sufficient purposeful activity for the total prisoner population. Prisoners should be encouraged and enabled to work and learn during and after sentence...'* Working in prisons can provide prisoners with an opportunity to gain work related skills and experience that can help them reintegrate into society on their release, building their potential to become hardworking future employees. This is partly achieved by providing employment/enhanced vocational training to tens of thousands of workers in more than 450 facilities in Her Majesty's prisons including Prison Service Farms. This in turn is instrumental in helping offenders turn away from crime, and giving them back a sense of stability, discipline and responsibility.

There are six farms across the prison estate; these opened in 1935, 1939, 1946 (two opened in that year), and 1962. These are North Sea Camp, Prescoed, Hewell, East Sutton Park, Wymott and Kirkham.

The definition of term 'farm' in this case is those perform large scale production, either livestock or arable e.g. for the production of milk, meat or fresh produce (agriculture) as a primary function.

Between 2002 and 2005, the Prison Service significantly reduced its farming commitment from twenty-three farms, to the current six.

The main demanders for the current contract are within the Midlands Region, namely HMP North Sea Camp and HMP Hewell, HMP Prescoed/Usk (Wales), and with a few smaller requests from HMP Kirkham and HMP Wymott.

HMP Kirkham hold approximately 48 beef cattle, 74 pigs, 250 sheep.

HMP Wymott hold approximately 18 beef cattle, 7 pigs and 137 sheep

HMP North Sea Camp currently have 25 breeding pigs plus finishers (pigs being fattened for slaughter) giving a total of around 250, 400 breeding sheep plus lambs a total of around 1000.

HMP Hewells current livestock headcount stands at 116 Jersey Milking Cows, 100 followers (weaned cattle), 13 beef cattle, and 50 pigs for pork/bacon production.

HMP Prescoed/Usk currently have around 190 cattle.

HMP East Sutton Park are noted as having 172 pigs (Boars, Gilts and Weaners), 108 sheep (Ewes, Rams and Lambs) and 16 horses

1.2 Purpose

This purpose of this schedule is to define the Authorities contract requirements for service and product to formulate minimum requirements to allow the contractors compliance to be measured in conjunction with the other contract schedules, which form the final contract.

The information contained within this document forms the basis of the criteria against which the Contractors performance will be measured.

1.3 Resultant Contract

The resultant contract shall be a National 4 year call off contract with the Ministry of Justice on behalf of the participating contracting Authorities, unless otherwise terminated in accordance with the terms and conditions of contract (Default, Disruption and Termination 36 – 42). The contract shall be non-exclusive and has no guarantee of business or volumes.

The HM Prisons demands constitute the majority of the contracting requirement and it is intended that the Contract will be split into 2 Lots to cover the regions required as below

Lot 1 – Midlands Region and Lancashire (HMP North Sea Camp, HMP Hewell, HMP Wymott and HMP Kirkham) four year contract value in the region of £600,000

Lot 2 – Wales Region (HMP Prescoed/Usk) four year contract value in the region of £386,000

However provision shall be made for supply to other OJEU advertised contracting Authorities who may have a requirement. All other participating contracting Authorities shall remain liable for their own demand call offs, dispute resolutions and payments. Entry to the Contract for other participating Contracting Authorities will be by means of a formal variation to contract form and may include a bespoke element for local product requirements or variance for organisational administration processes.

The contract owner shall be the Ministry of Justice Commercial Contract Management Directorate (CCMD).

1.4 Product Variation

The Authority may over the life of the contract identify other products which may be migrated to the contract, of which the Contractor will be notified at the relevant time during the life of the contract. In addition, product lines or selections of products may be removed from the contract at the discretion of the Authority. Where items are to be removed the Contractor will be issued with a minimum of three months notice to allow for reduction of stock levels, unless otherwise agreed by both parties.

Where the contractor proposes new or alternate products, to replace or supplement the contractor's product range, this will be subject to the approval of MoJ Procurement. The contractor is permitted to propose changes to products either on an ad hoc basis or as part of an ongoing standardisation process or product review. Such proposals will be submitted to the MoJ Procurement Directorate in the first instance, after which non-returnable samples (if required) and product specifications may be requested and are to be provided free of charge.

Any proposed changes to the products shall be communicated to the Authority prior to any changes to the specification being carried out. Any changes to the supply of models or variants to the minimum requirement of the Authority shall only take effect upon a formal variation to the contract specification unless agreed in writing with a member of the MoJ Procurement Directorate

The Contractor may receive specific requests from establishments for non-catalogue food stuffs. This will be agreed directly with site as per particular animal feed requirements and quoted for to enable a purchase order to be raised. Should this be an ongoing requirement then the Contract Management Team should be notified with a view to adding to the catalogue.

The Authority has the right to sample/test any batch for quality via a third party.

2.0 SCOPE OF REQUIREMENTS

2.1 Headline Requirement

This requirement relates to the Ministry of Justice's requirement for the supply of Farm Animal Feed within its own organisation and participating Contracting Authorities across England, Wales & Scotland.

A list of current organisations within the Ministry of Justice organisation can be found at the web link below:

<http://www.justice.gov.uk/about>

Products are required to be delivered regionally and or nationally to individual business locations and products are demanded on an adhoc basis by the individual sites. Each business unit location is responsible for identifying their own requirements, ordering process and payment settlement.

The contractor will be responsible for the purchase, logistics, storage, delivery, uplift, administration and pre- and post sales support of the products and service direct to the end user and the MoJ Procurement Contract Manager.

2.2 Quantity of Goods

The call off contract shall have no guarantee of business or volumes; however indicative volumes have been given in the RFP document 3.7.

It is the responsibility of the Contractor to ensure that they manage their product forecasting and inventory for the duration of the contract.

The Contractor will be required at all times to ensure sufficient stocks are maintained to fulfil orders placed by the Authority within the lead times contained within 4.7 Lead Times below. The legacy demands provided by the Authority are only an estimate of likely future demands, but are subject to change during the life of the contract.

The Contractor shall be able to supply in both low and high volumes in line with the set minimum order quantity of each product line to the end user based on legacy demands or an agreed forecasting model with the Authority.

The Contractor is also obligated to ensure that contingency arrangements are in place for alternative supply should the Contractor find they are unable to meet the requirements of the contract within the relevant lead-times

The contractor is responsible to pro-actively engage the Authority for periodic product and demand reviews.

2.3 Minimum Shelf Life

All products supplied by the Contractor should remain fit for purpose under normal storage conditions for a minimum of 3 to 12 months or until their expiry (best before) date, depending on factors such as how they were harvested, processed and or stored. The Contractor must notify site by way of labelling or other means what the shelf life per batch will be.

2.4 Legislation

In addition to the terms and conditions schedule, Contractors must take cognisance of all relevant and pertinent UK and EU legislation and Directives in fulfilling the legal requirements to supply their products for sale in the UK market, including but not limited to:

- EU Regulation 178/2002 on the general principles of food law
- EU Regulation 882/2004 on official food and feed controls
- EU Regulation 1831/2003 on additives for use in animal nutrition
- EU Regulation 183/2005 on feed hygiene
- EU Regulation 152/2009 on sampling and analysis
- EU Regulation 767/2009 on the placing on the market and the use of feed
- Directive 2002/32 on undesirable substances in animal feed
- Directive 2008/38 establishing a list of intended uses of animal feeding stuffs for particular nutritional purposes

Legislation on animal feed is harmonised at European Union (EU) level. It applies principally to feed for farmed livestock, but also covers feed for horses, pets, farmed fish, zoo and circus animals, and creatures living freely in the wild

The regulatory regime for animal feed, based on legislation negotiated and adopted in Brussels, is intended to safeguard animal and human health and ensure traceability throughout the feed chain. Most businesses that use, manufacture or sell animal feed must be registered or approved, and comply with specified standards in respect of their facilities, storage, personnel and record-keeping. This includes farmers feeding animals producing food for human consumption and arable farms growing crops for feed use.

In addition, a number of codes of practice and quality assurance schemes apply to the production and delivery of feed to farms and the sourcing, storage and handling of feed materials and compound feeds. The main codes are those drawn up by the Agricultural Industries Confederation (AIC) and the Grain and Feed Trade Association (GAFTA). These and other codes - developed by the feed industry, farmers' unions, and trade bodies such as egg producers and the Soil Association - are voluntary, but help ensure that measures are in place to address identifiable hazards and trace feed materials. The ultimate aim of both legislation and self-regulation is to ensure that animal feed is safe, wholesome, and does not present any danger to animal or human health and the environment.

The Contractor must provide the Authority, on request, with copies of relevant conformity certificates and testing reports of compliance for each product line supplied with regard to all applicable legislation.

Over the life of the contract it is the responsibility of the contractor to notify the authority of any known product that does not comply with legislation or standards which impact the use or safety of their product. Failure to notify the authority and/or comply with such legislation may lead to the termination of the contract.

Specific highlighted product & supply Legislation shall also be applicable as a minimum:

Sales of Goods Act 1979 (as amended)

Supply of Goods and Services Act 1982 (as amended)

Other Legislation can be accessed via the following websites:

The National Archives publishes all UK Legislation on behalf of HM Government. The relevant information relating to legislation can be found on-line via the web link below

<http://www.legislation.gov.uk/>

2.5 Policies & Organisation Standards

The Contractor must comply with all relevant Government Policies and Standards, these may include but not limited to:

- Delivery Drivers Hand Book

Prison Service Orders can be found at

<http://www.justice.gov.uk/guidance/prison-probation-and-rehabilitation/psipso/psos.htm>

Prison Service Instructions can be found at

<http://www.justice.gov.uk/guidance/prison-probation-and-rehabilitation/psipso/psis/index.htm>

G3.0 SPECIFIC REQUIREMENTS

3.1 Product Requirements

The Ministry of Justice has a requirement for the supply of Animal Feed to Farms within HM Prison Service as detailed but not limited to below:

Lot 1 – HMP North Sea Camp, HMP Hewell (Midlands Region), HMP Kirkham (Preston), HMP Wymott

Type of Food	Specification	Current Analysis, Contents and Breakdown of Feed:			
		Product required or suitable alternative	Oil	Protein	Fibre
Dairy Herd Concentrate Feed (Bulk)	To provide dairy cow concentrate to meet the needs of the milking cows balancing the available forage.	Milkmore 20	4	20	9.5
		Milkmore 23	4	23	9.5
Heifer Rearing Concentrate (Bulk)	To provide a concentrate suitable for Jersey heifers post weaning to pre-calving.	Rearer 18 Nuts + Biosprint	4	18	9
Sopralin (25kg Bags)	A high vegetable protein which as a result of precise treatment contains a high level of Digestible By Pass Protein (DUP)	Sopralin	2.6	46.5	6
Calf Starter Pellets (25kg Bags)	To provide pellets for Jersey heifer calves up to post weaning	Start and Wean Pellets	4	18	9

Prime Beef Premium Nuts	A complimentary feed for feeding to growing and finishing cattle in a semi-intensive system	Beef Finisher Pencils/Nuts (ash 9%, moisture 14%, crude oil and fats.)	4.5	14	7
Prime Beef Supreme + Biosprint Nuts	A complimentary feed for feeding to intensive growing and finishing beef cattle from 10 weeks of age		4	16	10
Dry Cow Rolls (Bags)	To provide a complementary feed stuff in bags, designed to be fed to Jersey cows pre calving. Designed to reduce calcium intake.	Dry Tec L Nuts	3	21	10
Hi Magnesium Cattle Buckets	To help maintain adequate intake of minerals and vitamins and to help prevent grass staggers	Hi Mag Cattle buckets			
Maxcare Cattle Bucket	To help maintain a balance of vitamins and minerals designed to meet year round requirements for dairy and growing cattle.	Maxcare Cattle bucket			
Calf Milk Powder (25kg Bags)	To provide calf milk suitable for Jersey calves	Current Suppliers own Whey Based		23	
Sow Concentrate Pellets (Bulk and Bags)	To provide a single sow concentrate ration designed to be fed to sows throughout pregnancy and lactation	Supabreed Nuts	6	16	5.5

Pig Finisher Pellets (Bulk)	To provide pellets in bulk loads which are complete feeding stuff for feeding finishing pigs from 50kg live weight until slaughter	Supalean Pellets	5.5	18.5	5
Pig Grower Pellets (Bulk)	To provide pellets which are complete feeding stuff for feeding suckling piglets for 2-15kg live weight.	Supawean Pellets			
Poultry Layers Pellets (Bulk and Bags)	To provide a complete feed stuff designed to be ad-libitum laying free range poultry. Protein content must be in range of 18%-20%.	Freshlay Pellets	4.5	18	5
Ewe Nuts (25kg Bags)	To provide a complimentary feed stuff for feeding breeding ewes pre and post lambing	Ewemaster Nuts	4	18	11
Lamb Creep (25kg Bags)	To provide a complementary feed stuff designed to feed ad-libitum to lambs in conjunction with a source of long fibre. Protein content must be in the range of 15%-20%	Lambmaster Pellets	3.5	16	11
Mixed Grain	Wheat, maize, soya oil	Mixed Grain			
Oyster Shell Grit	To aid formation of good shells on eggs and supply a source of calcium	Oyster Shell Grit			

Medicated Lines	Where medication is prescribed by a veterinary surgeon to be added to the animal herds feed a medical prescription will need to be sent from vet to supplier.				
TESTING					
Forage Analysis					
Ration Formulation					

HMP Hewell are on a Channel Island manufacturing contract and produce 840,000 litres of milk a year which brings in revenue for the establishment. It is crucial that the feed for these cattle consist of ME (Metabolisable Energy) of 12.5% as the energy requirement of Jersey milk is higher than other breeds. If the composition of the dairy cake is not adequate then milk yield drops. Jersey cows are a high yielding herd whose production is dependant on the quality of the feed not quantity.

Lot 2 - HMP Prescoed/Usk (Wales)

Type of Food	Specification	Current Analysis, Contents and Breakdown of Feed:			
		Product required or suitable alternative	fats	Protein	Fibre
Maxi Milk HE 18	High Energy (13.5 ME) diet for parlour feeding high yielding Holstein dairy cows	Maxi Milk HE 18	4.8	18	7.5
Cow Feed	Specific blend formulated to balance silages from 2012 season	HMP Blend	3.8	21	15
Quickstart HP Calf Pellets	High Quality baby calf diet to compliment milk powder	Quickstart HP Calf Pellets	3.5	18	8.5
Pre-lac Rolls	High DUP Protein dry cow roll fortified with specific mineral package to balance Cilwrgi forages	Pen Mill Pre-lac Rolls	4	20	11

Provimilk/Daisy	Whey based milk powder for heifer rearing	Provimilk / Daisy	18	22	0.4
Urea Prills (25kg Bags)	High RDP to balance low protein maize silage and grass silages in 2012	Urea Prills			
Poultry Layers Mash	To provide feed for free range hens from point of lay to depletion	Poultry Layers Mash	3.5	16	5.5
Poultry Layers Pellets	To provide feed for free range hens from point of lay to depletion	Freshlay Pellets	4.5	18	5
Mixed Corn	To provide a comprehensive feeding mix (a mixture of wheat and maize) suitable for feeding to all types of free range poultry and fowl from 4 weeks of age	Mixed Corn			
Oyster Shell Grit	To aid formation of good shells on eggs and supply a source of calcium	Oyster Shell Grit			
Medicated Lines	Where medication is prescribed by a veterinary surgeon to be added to the animal herds feed a medical prescription will need to be sent from vet to supplier.				
TESTING					
Forage Analysis					
Ration Formulation					

3.2 Product Sourcing

The Authority may require the Contractor to source additional non-contracted Items on an ad hoc basis. If usage of the item is considered significant or if the supply chain is such that guarantees of purchase are required – the items will be added to the contract via formal variation.

Where the Contractor is requested to source additional items the Authority reserves the right to purchase the items elsewhere in the future unless they are subsequently included in the contract.

The Authority will endeavour to approach the Contractor for quotations for additional required items which fall within the scope of this contract.

3.3 Inventory Management

Contractors Inventory (Stock Levels) shall be managed by the Contractor and shall ensure adequate financial resources are available to finance stock holding during the life of the contract taking into consideration both seasonal/normal demand and contingency stocks.

The contractor will hold contingency stock to cover minor delays in deliveries from manufacturers and additional stock during the mobilisation period. All early indication of any potential supply disruption will be notified to the Authority in writing along with a contingency measure to eliminate potential stock outs.

For products with a manufacturing lead time of greater than 1 week the contractor will ensure that relevant levels of stock holding is in place at the manufacturers (or tier 2 Contractors) storage facilities.

The responsibility for forecasting & fulfilling demand will be the responsibility of the contractor for all product lines supplied within the contract.

G4.0 SERVICE REQUIREMENTS

4.1 Account Set up

Each individual participating organisation shall have their own account with sub accounts for individual business units and locations for the purposes of recording transactions and product demands for individual business units for reporting management information to the Authority.

The headline account MoJ organisational structure shall be:



4.2 Electronic Catalogue Production and Maintenance

The current IT based procurement system is driven by electronic supplier catalogues for specific contracted items and prices, in line with the general trends in procurement.

The benefits to suppliers are that the system will encourage contract compliance by pointing users to centrally agreed contracts and approved products. Orders from the Authority will be transmitted electronically, speeding up the order processing and lead-times for the customer.

The Contractor shall provide an electronic catalogue containing one or more of the following:

- MS Excel Spreadsheet as a minimum level (a template will be provided).

- eCatalogueXML
- cXML
- Flat File

Procurement in the MoJ is underpinned by the Oracle e-Business Suite and in particular the 'I-Procurement module which is a self-service requisitioning application (similar to online shopping).

In most cases, staff can select the items they want from electronic catalogues, filling up "virtual" shopping carts as they go. It has a virtual checkout where they confirm their order. They can also create shopping lists for things they get regularly.

The Contractor shall provide and update as required by the Authority's Representative, electronic catalogues detailing all Goods and Services provided under the Contract. These catalogues shall be formed in an electronic template compatible with the Authority's systems and in particular the .XLS file format (Microsoft Office).

The Contractor shall ensure that these catalogues are provided and updated with all information necessary for the Authority to effectively operate its Oracle e-Business Suite and in particular to search catalogues and place Orders through the i-Procurement module. Catalogues must be populated with information including but not be limited to: suppliers unique ID/product code, clear descriptions of the Goods/Services; units of measure, pack sizes, minimum order quantities, pack prices, UNSPSC codes and lead times.

The catalogues available on i-Procurement do not currently include photographs or visual representations of the items available; however the contractor may be required to provide an electronic bespoke pictorial catalogue, which will include pictures and basic product specification and pricing to further assist our customers in their product selection. Pictorial catalogues can significantly reduce customer queries to both the Authority and Contractor.

(Note that this electronic catalogue does not need to be a professionally developed publication in terms of design, art work, branding)

4.3 Purchasing Routes

All purchase orders will be generated automatically by means of "electronic transmission" in PDF file format (Adobe Acrobat) by either the i-Procurement System or i-Inventory System which are present within all HMPS Establishments and across

HMPPS. Electronic transmission means either electronic mail or auto-fax (sent to print on a facsimile machine).

The successful contractor will be required to accept electronic purchase orders. The contractor shall be able to accept electronic purchase orders by one of the following methods:

- XML(EDI)
- Traditional EDI
- E-mail

The Contractor shall ensure that they have sufficient capability to receive purchase orders in this format without interruption (24-hours a day and every day of the year). The Contractor shall ensure that purchase orders are properly stored, are not accessible to unauthorised persons, are not altered, lost or destroyed and are capable of being retrieved only by properly authorised persons.

The Authority shall not be liable for the consequences of a corrupted, or incorrect transmission, or any failure to re-transmit a purchase order, if the error is or should in all the circumstances be reasonably obvious to the Contractor. In such event the Contractor shall immediately notify the Authority's Representative thereof.

The Contractor is required to provide the necessary information to allow the Authority to create and maintain an electronic catalogue of goods. Refer to 4.2.

4.4 Demand Requests

All goods ordered by the MoJ shall be demanded by an official purchase order form with a unique purchase order number communicated by either email or fax direct to the Contractor. The Contractor shall not make any provision for supply outside the purchasing route described above without an official Purchase Order unless there has been a technical problem as advised by a member of the procurement team.

Where an electronic or faxed purchase order is not available but contracted goods are required urgently, written (including email) authority from a member of the Ministry of Justice Procurement Directorate may be treated as an agreement by the authority to purchase the goods.

The Contractor will be required to email confirmation of the order including product lines, prices, quantities and an estimated delivery date to the requestor.

The contractor will work with the Authority to minimise contract leakage and off-contract spend, which may include internal advertisement of the contract and the production of catalogues etc see section 4.2.

4.5 Quotations

Where approved by MoJ Procurement, the Contractor shall supply the business units a written quotation upon request, for non-core contracted goods or where larger economic quantities are demanded by the Authority.

4.6 Goods Shipments & Delivery Locations

Goods shall be shipped directly to the end user to an official address as noted on the purchase order as and when required. Establishment Map at **Appendix A and A (2)**.

4.7 Lead Times

Delivery of Goods

Lead times for the performance of the contract shall be firm dependant on Contractor's tender submission and details will be included in the final contract (Schedule H Pricing & Payment Schedule). This will operate in conjunction with the Prison opening times for deliveries. In the event that products are unavailable at the time of order, the products will be placed on back order and the establishment promptly notified.

Continued failure to supply goods within the agreed timescales and service levels will result in a Service Improvement Notice being issued; see Terms and Conditions Schedule J Monitoring.

Where goods are requested which are not contracted items the Contractor will be required to give an accurate estimate of the lead time at the time of ordering. These are not required to be fixed but the Contractor is expected to inform the sites of the expected delivery date.

Product Lead Times

Please refer to page 135 (2.1.5 of ForFarmers tender submission)

Dispute Resolution Lead Times in Working Days

The above contractor's lead-time performance shall be measured within Schedule 8 Monitoring, contract Key Performance Indicators and must meet a minimum service level, as stipulated in the contract.

4.8 Shipments, Delivery and Supply Chain Requirements

It is the responsibility of the Contractor to ensure that the vehicle used for each delivery is of an appropriate size i.e. appropriate means can access with ease. If using an outside courier service the Contractor must make that company aware of gate opening times and any gate restrictions for any deliveries being made.

If using own drivers the Contractor is required to ensure that all drivers delivering to HM Prison Service Establishments have read and understood the HM Prison Service Drivers Handbook, which can be found in the RFP document section 1.3 Background Information. Sections 2.7 and 2.8 of the Drivers Handbook relate to items which are prohibited inside prisons. These include items which may be used as weapons, alcohol, mobile telephones and drugs (including medicine in most cases).

It is the responsibility of the Contractor to ensure that prohibited products are not supplied, and that vehicles containing deliveries for other locations contain details of ALL items on the vehicle. In the case of multi-drop deliveries the driver MUST be made aware of what goods are on the vehicle before entering the prison.

The Contractor shall be required to:

- Handle product sourcing from manufacturer(s).
- Receive and store deliveries from manufacturer(s).
- Receive, collate, pick and pack orders from customers.
- Distribute to MoJ locations across England and Wales.
- Deliver goods in accordance with the contract lead times.
- Comply with the Authority's vehicle restrictions, goods acceptance and stores opening times [These may be subject to change during the implementation period and over the life of the contract].
- Obtain proof of delivery and leave appropriate goods delivery notes. The delivery notes should contain information as per 4.13.
- Ensure that purchase order numbers are referenced on invoices that are raised to prevent a delay in payment.
- Submit Invoice as per Contract requirements

4.9 Delivery Charges

The size of deliveries to site will vary dependant on requirements and minimum order quantities will be set on contract award to maximise cost efficiencies. It is understood that there will be a Haulage surcharge for Zone F-North Sea Camp for Artic Vehicles to be agreed during tender process and this will be included in the catalogue and added to purchase orders as and when required. See Schedule H Pricing and Payment in Terms and Conditions.

4.10 Delivery Times / Site Opening Times

The majority of deliveries will be to HM Prison Establishments which have farms, these are noted, but not restricted to, the sites in **Appendix B** Delivery Locations and Core Opening Times.

Each requesting site is subject to different operating times to accept deliveries. All deliveries shall be Monday to Friday excluding bank holidays. This list is subject to change throughout the life of the contract and the Contractor will be notified of any changes where relevant.

Each delivery location must be uniquely identified by the Contractor for the purposes of Management Information Reporting as per Terms and Conditions Schedule J Monitoring.

4.11 Gate Restrictions

The Contractor shall comply with delivery restrictions provided by the Authority in **Appendix C**. Sites as a min are able to accept 7.5 tonne vehicles. Any updated Delivery restrictions will be communicated to the Contractor during the life of the contract.

4.12 Packaging and Labelling of Consignment

Packaging

This should be sufficiently adequate and robust enough for carrier services to ensure the items contained within are delivered to the customer in pristine condition.

The Contractor shall ensure that goods are packed to protect them from damage and provide for safe handling. Packaging volume and weight must be the minimum amount to maintain necessary levels of safety and acceptance for the packed product and for the consumer.

Packaging must be manufactured so as to permit reuse or recovery in accordance with specific requirements.

Reusable Packaging must:

- Enable a number of trips or rotations in normally predictable conditions of use.
- Be able to be processed without contravening existing health and safety requirements for the workforce.
- Meet the requirements specific to recoverable packaging when it becomes waste.

All Packaging must be recoverable in one or more of the following ways:

- Manufactured in such a way that a high percentage of packaging is easily recoverable through material recycling.
- Recoverable through energy recovery.
- Bio-degradable or photo-degradable packaging.

The Contractor shall be required to ensure that all packaging is labelled in accordance with guidelines laid down under the EU Directive 94/62/EC of 20 December 1994 on packaging and packaging waste and any subsequent amendments.

Labelling

The Contractor shall meet the following minimum requirements for packing and labelling:

Outer box - These must be clearly marked with the following information:

- Contractor's name
- Weight of package KG
- Prominent and adequate warnings for any hazardous goods in line with legislation

Individual Packs – These must be labelled as per current EU Legislation. The provisions cover those noted below and further information is contained in a number of EU measures as noted in section 2.4

- the information to be provided to purchasers on feed labels
- the nutritional claims that can be made for certain feed products
- the names and descriptions to be applied to various feed materials (that is, ingredients either fed singly or included in compound (manufactured) feeds)
- the additives (including vitamins, colourants, flavourings, binders) authorised for use in animal feed
- the maximum levels of various contaminants (e.g. arsenic, lead, dioxins and certain pesticides)

- certain substances that must not be used in feed

4.13 Delivery Advice Notes

Each delivery consignment shall be accompanied by a delivery note with the relevant information to identify and audit the relevant delivery plus any communications required in writing as a part of the delivery. These will be inside the package or attached to an outer pallet or carton as appropriate.

Information should include:

- The purchasing organisations official purchase order number.
- Delivery address
- Account number
- Line product detail including pack size and quantity
- Unit price, line total and total price.
- Number of cartons in consignment
- Identification of any outstanding products not delivered on order.

4.14 Delivery, Back Order and Substitute Items

The Authority shall be able to confirm the outer box quantities at the point of delivery. Individual items shall be checked against packing lists or delivery notes with 5 working days.

The Authority will notify the Contractor within 5 working days of any delivery discrepancies by email. The Contractor shall either ship or credit such shortages dependant on the urgent nature of the those items missing or collect miss-picks or additional items shipped on the next delivery or arrange separate collection if required, Free of Charge.

If courier service or own drivers are used then proof of delivery will need to be attained at time of delivery as this will need to be supplied upon request should any discrepancies found when the order has been fully checked.

Any product placed on back order will be required to be recorded on the delivery note when the other items are delivered. If the backorder item is then delivered under a new delivery note or new invoice this order must still refer to the original official purchase order number to avoid delays in payment.

The Authority will not accept substitute items, unless pre-agreed by the Contract Manager and a free of charge sample has been provided if requested, (refer also to section 1.4 Product Variation). No agreements should be made locally to accept substitute items and the Authority must be notified of any stock issues to avoid this situation.

In the event of a substitute being dispatched and the product code, line description or price being different, then the Contractor shall advise the local business unit to cancel the order and re-submit the purchase order under the correct description, code and price to facilitate electronic invoice matching.

Substitute items for core contract product shall be supplied at the same specification and contract price.

4.15 Delivery Discrepancies

Items which are delivered in error or are found to be unsuitable or damaged will be returned to the Contractor as agreed between the delivery location and Contractor by arranging a separate collection at the contractors' expense, unless advised by the Contractor that the delivery location can dispose of the said items.

All deliveries will be subject to inspection by the MoJ personnel and may be rejected if they are in an unsuitable state, or if they have not been ordered.

The Contractor shall either replace or credit the said goods as agreed with the requestor dependant on the urgent nature.

The Authority will require a legible proof of delivery, if courier service or own drivers are used, to ascertain a delivery has been made in the event of a dispute.

The contractor shall be liable for the cost of collection and re-delivery for discrepancies.

4.16 Returns Liability

In the event that goods are to be returned to the contractor, then the following applies;

If any foodstuff is found to be damaged or unsuitable for animal consumption the contractor will be notified immediately who will then advise site as to how best this will be dealt with – either disposal or collection. Replacement foodstuff shall be sent out immediately, at no extra cost to the Authority, so as not to disrupt the feeding of livestock.

4.17 Compliant Invoice Submission

The Ministry Of Justice has a system for invoices called Basware, once an invoice is received it has to go through a three way match process which matches the following:

- Invoice Amount
- Goods Receipted against Goods Ordered
- PO Number

If the entire criteria above match between the PO and Invoice submitted it will be released for payment. The submission of non-compliant invoices will cause delay in payment.

A compliant invoice must comply with the following requirements:

- Must be received at the correct billing address
- Should **not** be sent to delivery address or with delivery note
- Must all be in a standard format
- Must quote a valid Purchase Order Number (clearly printed on the PO)
- Must be to a total agreed sum
- Must list product lines broken down by product code
- Must give quantity purchased, and individual prices in addition to a line total
- Back Order Notification

When payments are made, all HMPPS accounts are treated as one i.e. all payments and credit notes to the Contractor will be remitted together, therefore if there is a credit sitting on the account no payments will be made against the whole account until invoices are accrued to the value of the credit.

4.18 Invoicing Address

Invoices are subject to the MoJ Standard Terms and Conditions of Contract 11. Invoices payable under the Contract shall be sent to the address stated on the Purchase Order and **not** to the delivery address.

4.19 Invoice Holds and Credit Notes

If the Authority has been over invoiced a credit note will be requested via the system. This will then automatically notify the company as to why this has been requested and the amount.

Credit notes should be submitted in the same compliant format as per the requirement for invoices in 4.17 with the addition of referencing the invoice number to which it refers.

4.20 Customer Contact Points

The contractor shall provide a telephone and e-mail customer contact point during office hours to allow sites to have access to general enquiries, product information, expediting orders, report discrepancies, arrange collections and complaints. This contact service is to be provided free of charge.

(Contractors Helpdesk details and contact points will be inserted into the final contract).

4.21 Environmental Sustainability Requirements

This section draws on the requirements detailed in the above section 3.1 but specifically highlights the sustainability requirements that the Prison Service seeks to promote with specific regard to this contract, in addition to the standard Sustainability Policy.

The Food and Agriculture Organisation (FAO) along with governmental, private-sector, and nongovernmental partners are working together on a number of fronts to strengthen the science of environmental benchmarking of livestock supply chains, this includes –

- Establishing science-based methods and guidelines on how to quantify livestock's carbon footprint, covering various types of livestock operations and rearing systems;
- Creating a database of greenhouse gas emission factors generated for the production of different kinds of animal feed - feed production and use offer significant opportunities for reducing livestock emissions.
- Developing a methodology for measuring other important environmental pressures, such as water consumption and nutrient losses.

Therefore all goods supplied under the contract will be required to [and be manufactured in such a way as to] minimise the negative environmental impact of their use, within reason and without detrimental effect to their fitness for purpose.

The Contractor will be required to assist the MoJ in providing information relating to sustainability with regards to its products and distribution methods as and when required.

The use of polystyrene is not permitted in any packaging unless unavoidable and approved by the authority representative.

G 5 CONTRACT MANAGEMENT REQUIREMENTS

5.1 Contract Manager Requirements

The Ministry of Justice places a high value on Contract Management and will therefore nominate an Executive Contract Manager (ECM) who will manage the overall contract and also a Contract Manager (CM) who will be the main point of contact and responsible for day to day contact with the Contractor, with regards using the contract and dealing with local operational issues.

The Contractor shall likewise nominate a Contract Manager (CM) who will be the single point of contact act on behalf of the Contractor with regards to this agreement. The Contract Manager shall take overall responsibility for the Contract and shall not change without notification in advance to the Executive Contract Manager.

The Contractor shall be responsible for ensuring that the provision of supplies/services are carried out with reasonable skill, care and diligence in accordance with the Contract and to the satisfaction of the Authorities CM and ultimately the ECM.

The Contractor shall provide the CM and ECM with Management Information on the provision of Supplies/Services at specified intervals and in accordance with the Reporting Requirements in the Terms and Conditions Schedule J Monitoring.

The ECM and or CM will meet with the Contractors CM upon request as part of an ongoing contract management process.

(Contract Manager Details for both parties to be included within the final contract for both parties)

5.2 Savings Initiatives

The Contractor must work with the Authority and utilise their specialist knowledge to help identify areas for cashable cost savings where possible through the standardisation of products and the reduction of product lines.

The number of proposed initiatives in each year of the contract and savings achieved as a result will be included in Key Performance Measurement (KPI's).

Proposed Initiatives which are not adopted at the discretion of the Authority or in order to comply with policies specific to the Authority will not be recorded in a manner detrimental to the Contractors' performance measurement.

The Authority will work with the Contractor to run operational trials where necessary to prove the viability of savings initiatives before widespread adoption.

5.3 Contract Mobilisation and Implementation Requirements

A final detailed implementation and mobilisation plan will be agreed between the parties within two weeks of contract award.

The Contractor will submit within the tender questions a contract implementation and mobilisation plan, which will form part of the final contract documents including specific timescales for mobilisation.

The Contractor will adhere to the agreed implementation plan, including the agreed reporting requirements contained within. *[Based on Tenderer submission]*

The implementation plan will be required to include (as a minimum):

1. Identify and agree key actions and time lines for mobilisation
2. Communicating the change to MoJ End users
3. Liaising with individual locations to organise account set ups or similar provision for the basis of location specific MI.
4. Purchase of initial stock and Inventory management of forecasted stock levels
5. Adequate named contact points, project teams contact points etc
6. Mobilisation review dates

5.4 Contract Exit and Demobilisation Requirements

Upon request by the Authority the Contractor will be required to produce an exit plan relating to withdrawal from the contract. This will be requested either before termination, or a minimum of three months prior to expiry of the contract.

As a minimum the exit plan is required to include:

- Management of Stock levels, emphasis on those purchased specifically for the contract
- Lead times for phased handovers
- Timescales and indicative timeline
- Offer for clearance stock

These are to be considered with regards to:

Activity Objective - The overarching objective regarding the potential exit e.g. management of stock.

Key Action Points - Measurable tasks which are required as a part of the strategy e.g. data collection regarding existing stock, consideration of usage rates, communications with branches or depots, plan to ensure continued service levels towards the end of the contract etc

Lead Responsibility - e.g. MoJ Procurement, Contractors Account Manager, individual branches etc.

Planned Start / End Dates

Risk Description - Identified areas of risk and their source e.g. excess stock, staffing/employment concerns.

Overall Impact - The severity of identified risks and any knock on impact.

Contingency/Countermeasures - Any proposed mitigation to reduce or counter the risks.

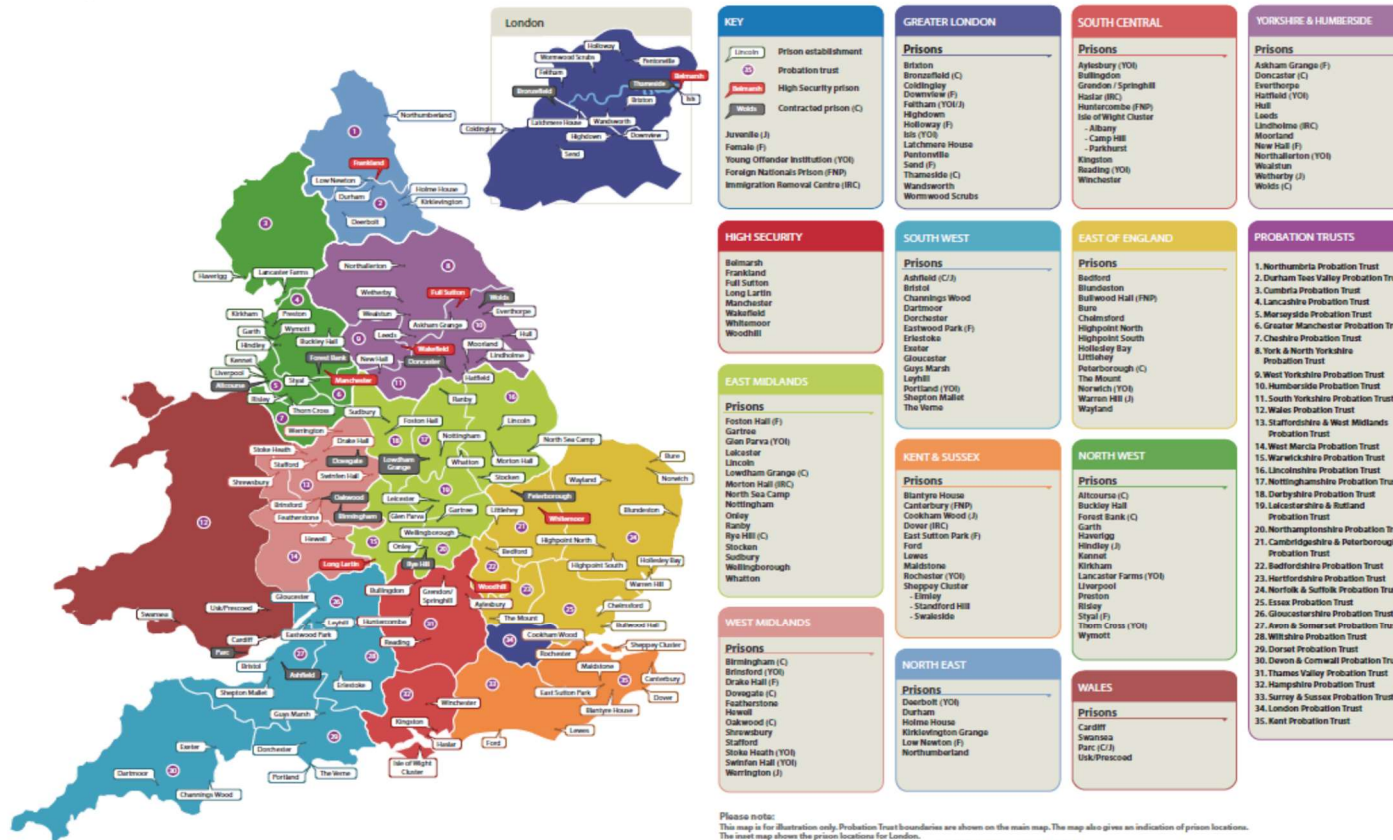
The exit strategy will be treated as commercial in confidence, and is requested with the aim of helping both the Contractor and the MoJ deal with the risks and issues related to the ending of the arrangement. Should the contractor not co-operate with the request no

consideration will be given to the contractor for stock liability.

Appendix A – Establishment Map



Probation & Prisons Map



Appendix A (2) – Midlands Region The Midlands area of the MOJ Prisons service covers both the East and West Midlands with a small proportion retaining farms



West Midlands



East Midlands

Appendix B – Locations / Opening Times

Establishment Name	Address	Contact Name	Contact Number	Accept Pallets Y/N	Manual Handling Equipment	External Store Y/N	Core Opening Times	Comments
HMP East Sutton Park	Sutton Valence, Maidstone, Kent, ME17 3df	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
HMP Hewell - Brockhill Blakenhurst Hewell Grange	Hewell Lane, Redditch, B97 6QS	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
HMP Kirkham	Freckleton Road, Kirkham, Preston, Lancashire, PR4 2RN	[REDACTED]	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
HMP North Sea Camp	Freiston, Boston, Lincolnshire ,PE22 0QX	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
HMP Usk/Prescoed	47 Maryport Street, Usk, Monmouthshire, NP15 1XP	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
HMP Wymott	"Ulnes Walton Lane, Leyland, Preston, PR26 8LW"	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]

Appendix C – Gate Restrictions

Establishment	County / Town	Post code	Height	Width	Distance between inner & outer gate	Lock gates?
East Sutton Park	Kent	ME17 3DF				
Hewell Grange (includes Brockhill as one order)	Worcestershire	B97 6QQ				
Kirkam	Lancs	PR4 2RN				
North Sea Camp	Lincolnshire	PE22 0QX				
Usk/Prescoed	Monmouthshire	NP15 1XP				
Wymott	Preston	PR26 8LW				

SCHEDULE 2

PRICING AND PAYMENT SCHEDULE SPECIAL CONDITIONS: PRICING AND PAYMENT

General

1. All prices contained within the Pricing Schedule are exclusive of VAT. See Section Standard Terms & Conditions, Payment & Contract Price 10-14 for individual terms.

Contract Pricing Duration

2. Pricing will be firm for the first 4 (four) months of the contract after such time the supplier will be permitted to submit pricing reviews as per 4 – 17.

Pricing Review Process

3. The Contractor may apply for a price review after the first 4 (four) months of the contract as per 4 –17. The Contractor shall, submit in writing within 30 days of the price review commencement date the details and supporting evidence for consideration by the Authority.
4. Any increase in the Contract Price pursuant to clause 13.1 shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index ("**CPI**") (or such other index specified in the Pricing and Payment Schedule).
5. All requests for price increases will be subject to the supplier providing actual documented evidence of an unavoidable increase in costs through the supply chain at component level. This should include a full breakdown of the component product price and the relevant change request including invoices evidencing the component increase.
6. Relevant trade markets price indices can be submitted to demonstrate the material commodity element of supply such as:

Index Mundi or FT Index (among others)

7. Where an increase is unavoidable the supplier will be expected to consider re-sourcing product lines, rationalisation or other efficiencies to offset the net impact on the Authority.
8. Where there is a change in market forces and/or commodity prices which lead to a decrease in costs, the Authority will submit a request for price variance for the affected lines. The Authority reserves the right to request a price review where commodity price falls at any time during the life of the contract.
9. If the Contractor is aware of any decrease in commodity prices they should notify The Authority so a price variance can be drawn up and catalogues amended.
10. Upon non agreement of any request for Price increase, the Authority reserves the right to source products from an alternative route.

Commodity Costs

11. The Commodity Cost for each product shall only be subject to revision a maximum of three (3) times in each calendar year unless otherwise stated. The Commodity Cost for each Good shall only be changed on the first day of each calendar month hereinafter called the Adjustment Month.
12. Once the Commodity Cost is adjusted, it shall be fixed until the next Adjustment Month and not subject to any further adjustment whatsoever unless there was an exceptional market forces event as detailed below.

Exceptional Market Forces

13. Notwithstanding any of the above, the Contractor may seek at any time a reasonable adjustment of the Unit Price (excluding always the profit element) to take into account exceptional and unforeseen increases in the cost of raw commodity, transport and distribution and manpower and energy, that are due to "Exceptional Market Forces." No limit shall apply to any adjustment for Exceptional Market Forces provided that the Contractor takes immediate and reasonable steps consistent with the obligation to supply Goods in accordance with the Contract to mitigate against the effects of such Exceptional Market Forces and that provisions of paragraph 14 below shall apply to the increase. Any such adjustment shall be subject to the prior written agreement of the Authority and shall remain in force for the period of any such increases to the Contractor, after which the Contractor shall immediately restore the previously agreed price. In this context "Exceptional Market Forces" means any event outside the control of and not in any way attributable to the Contractor that leads to an increase in excess of 15% over a period of 30 days or more in the cost to the Contractor in its provision of the Goods and Services. For this purpose the events outside the control of the Contractor's comprise the following only:
 - (a) war, civil war or armed conflict;
 - (b) fire, explosion, storm, lightening, riot, flood, drought or earthquake;
 - (c) acts of government, local government or regulatory bodies;
 - (d) Strikes or labour disputes (other than affecting the Contractor's workforce)
 - (e) Nuclear, chemical or biological contamination, unless the source or cause of the contamination is brought to or near the affected area by the Contractor;
 - (f) epidemics or pestilence;

(g) increase in price of oil/fuel;

14. Where the Exceptional Market Forces referred to in paragraph 13 above relate to an increase in costs of between 15% and 25% to the Contractor the Unit Price may be increased to take account of 50% of the increase in costs to the Contractor. Where the increase in costs is in excess of 25% the Unit Price may be increased to take account of 100% of the increase in costs to the Contractor.
15. When seeking an adjustment for "Exceptional Market Forces," the Contractor shall present to the Authority such supporting evidence as is reasonably required by the Authority;
16. Any adjustment for "Exceptional Market Forces" shall, subject to paragraphs 13-14 above, be agreed within 5 days of the Contractor's request for an adjustment and take effect on the later of;

(1) the day on which the adjustment is agreed in accordance with this paragraph 16; and

(2) The expiry of the 30 day period referred to in paragraph 12 above.

PROVIDED THAT where any adjustment is agreed prior to the conclusion of the 30 day period the adjustment shall only become effective in the event that the Exceptional Market Forces remain in place throughout the 30 day period.

17. 17 Proposals for a Price Adjustment shall be presented to the Authority thirty (30) days prior to the start of the Adjustment Month and must be concluded and approved by the Authority's Representative not later than seven (7) working days prior to the start of the Adjustment Month. When the Contractor has supplied all the relevant supporting documentation and the price adjustments are fully justified in accordance with the Price Change, the Authority shall approve the proposal. Should the Authority have queries relating to the proposal these should be presented at the earliest opportunity to permit the Contractor sufficient time to respond to the query in order to ensure that approval of the proposal can be agreed between both parties seven (7) days prior to the Adjustment Month.

Efficiencies & Savings Continuous Development

18. The Contractor will fully co-operate upon request with the Authority with regards to investigating process and cost efficiencies savings whilst performing the contract. Where in the opinion of the Authority the Contractor does not comply the Authority reserves the right to re-source products outside of this arrangement,

Delivery Charges

19. All delivery charges are to be incorporated within the contract product pricing, with the exception of North Sea Camp as it is understood there will be a Haulage surcharge for Zone F-North Sea Camp for Artic Vehicles and

this will be included in the catalogue and added to purchase orders as and when required.

Minimum Order Quantities

20. All Authority orders will meet minimum order quantities of:
Bulk orders - minimum of four tonnes. This cannot be made up of two or more products.
Bags (25 kg or totes) - minimum order size of 1.5 tonnes. This can be made up of several different products (but preferably same product).

Invoice Submission

21. See Schedule G Specification for invoice remittance instructions.

Payment to Subcontractors

22. Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

Credit Notes and Invoice Holds

23. Where the Authority has been over invoiced or a price discrepancy has been made by the Contractor a credit note will be required to be raised by the Contractor for the disputed sum to allow payment of the remaining balance. Credit notes will be required to be raised within 4 weeks.
24. Payments will be delayed where the Contractors invoice does not match the original purchase order. All invoices shall match the original purchase order price and format to prevent the invoice from going on hold.

Product Details and Pricing

Pricing schedules

Lot 1

Description	Quantity/Base Price	Unit Price
EWEMASTER SUPREME 18 NUTS	Tonne	
FRESHLAY 17% PELL	Tonne	
MILKMORE 20 DAIRY NUTS	Tonne	
MILKMORE 23 DAIRY NUTS	Tonne	
PRIMEBEEF NUTS (25KG BAGS)	25kg	
PRIMEBEEF SUPREME + BIOSPRINT NUTS	Tonne	
REARER 18 NUTS + BIOSPRINT	Tonne	
SOPRALIN (25KG BAGS)	25kg	
START ' N' WEAN + GREENLINE NUTS (25KG BAGS)	25kg	
SUPABREED NUTS	Tonne	
SUPABREED NUTS (25KG BAGS)	25kg	
SUPALEAN PELL	Tonne	
SUPAWEAN PELL (25KG BAGS)	25kg	
WYNNGOLD BLOOM (25KG BAGS)	25kg	
OYSTER SHELL GRIT (25KG BAGS)	25kg	
HI MAGNESIUM CATTLE BUCKET	Each	
MAXCARE CATTLE BUCKET	Each	
MIXED GRAIN (25KG BAGS)	25kg	

Lot 2

Description	Unit of Measure	Unit Price
MAXI MILK HE 18	Tonne	
COW FEED	Tonne	
QUICKSTART HP CALF PELLETS (25KG BAG)	25kg	
PRE-LAC ROLLS (25KG BAGS)	25kg	
PROVIMILK/DAISY (25KG BAGS)	25kg	
UREA PRILLS (25KG BAGS)	25kg	
POULTRY LAYERS MASH (25KG BAGS)	25kg	
POULTRY LAYERS PELLETS (25KG BAGS)	25kg	
MIXED CORN (25KG BAGS)	25kg	
OYSTER SHELL GRIT (25KG BAGS)	25kg	

SCHEDULE 3 - CHANGE CONTROL

CCN: Contract Reference Number & Title Change Title	
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WHEREAS the Supplier and the Authority entered into a Contract for the supply of Farm Animal Feed dated (Insert date) (the "Original Contract") and now wish to amend the Original Contract

IT IS AGREED as follows:

1. The Original Contract is amended as set out in this CCN:

Change Requestor / Originator									
Summary of Change									
Reason for Change									
Revised Contract Price	<table> <tr> <td>Original Contract Value</td><td>£</td></tr> <tr> <td>Previous Contract Changes</td><td>£</td></tr> <tr> <td>Contract Change Note</td><td>£</td></tr> <tr> <td>New Contract Value</td><td>£</td></tr> </table>	Original Contract Value	£	Previous Contract Changes	£	Contract Change Note	£	New Contract Value	£
Original Contract Value	£								
Previous Contract Changes	£								
Contract Change Note	£								
New Contract Value	£								
Revised Payment Schedule									
Revised Specification									
Revised Term									
Change in Contract Manager(s)									
Other Changes									

2. Save as amended in the CCN all other terms of the Original Contract remain effective.
3. The CCN takes effect from the date on which both Parties sign below.

IN WITNESS of which this CCN has been duly executed by the Parties.

SIGNED for and on behalf of The Ministry
of Justice
Signature:
Name (block capitals):
Position:
Date:

SIGNED for and on behalf of [insert name
of Supplier]
Signature:
Name (block capitals):
Position:
Date:

SCHEDULE 4 - COMMERCIALLY SENSITIVE INFORMATION

- 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 E4 (Freedom of Information).
- 2 In this Schedule 4 the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.
- 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 4 applies.
- 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.

SUPPLIER'S COMMERCIALLY SENSITIVE INFORMATION	DATE	DURATION OF CONFIDENTIALITY

SCHEDULE 5 - SUPPLIER AND THIRD PARTY SOFTWARE

This schedule is not applicable to this contract.

Supplier Software comprises the following:

Software	Supplier (if Affiliate of the Supplier)	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?

Third Party Software comprises the following:

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

SCHEDULE 6 – INFORMATION ASSURANCE & SECURITY

1. GENERAL

- 1.1 This Schedule 6 sets out the obligations of the Parties in relation to information assurance and security, including those which the Supplier must comply with in supplying the Goods under the Contract.
- 1.2 The Parties acknowledge that the purpose of the ISMS and Security Plan is to ensure a robust organisational approach to information assurance and security under which the specific requirements of the Contract will be met.
- 1.3 The Parties shall each appoint and/or identify a board level individual or equivalent who has overall responsibility for information assurance and security, including personnel security and information risk.
- 1.4 The Supplier shall act in accordance with Good Industry Practice in the day to day operation of any system which is used for the storage of Information Assets and/or the storage, processing or management of Authority Data and/or that could directly or indirectly affect Information Assets and/or Authority Data.
- 1.5 The Supplier shall ensure that an information security policy is in place in respect of the operation of its organisation and systems, which shall reflect relevant control objectives for the Supplier System, including those specified in the ISO27002 control set or equivalent, unless otherwise agreed by the Authority. The Supplier shall, upon request, provide a copy of this policy to the Authority as soon as reasonably practicable. The Supplier shall maintain and keep such policy updated and provide clear evidence of this as part of its Security Plan.
- 1.6 The Supplier acknowledges that a compromise of Information Assets and/or Authority Data represents an unacceptable risk to the Authority requiring immediate communication and co-operation between the Parties. The Supplier shall provide clear evidence of regular communication with the Authority in relation to information risk as part of its Security Plan.

2. INFORMATION SECURITY MANAGEMENT SYSTEM

- 2.1 The Supplier shall, within 30 Working Days of the Commencement Date, submit to the Authority a proposed ISMS which:
 - 2.1.1 has been tested; and
 - 2.1.2 complies with the requirements of paragraphs 2.2 and 2.3.
- 2.2 The Supplier shall at all times ensure that the level of security, include cyber security, provided by the ISMS is sufficient to protect the confidentiality, integrity and availability of Information Assets and Authority Data used in the supply of the Goods and to provide robust risk management.
- 2.3 The Supplier shall implement, operate and maintain an ISMS which shall:

2.3.1 protect all aspects of and processes of Information Assets and Authority Data, including where these are held on the ICT Environment (to the extent that this is under the control of the Supplier);

2.3.2 be aligned to and compliant with the relevant standards in ISO/IEC 27001: 2013 or equivalent and the Certification Requirements in accordance with paragraph 5 unless otherwise Approved;

2.3.3 provide a level of security which ensures that the ISMS and the Supplier System:

2.3.3.1 meet the requirements in the Contract;

2.3.3.2 are in accordance with applicable Law;

2.3.3.3 demonstrate Good Industry Practice, including the Government's 10 Steps to Cyber Security, currently available at:

<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>;

2.3.3.4 comply with the Security Policy Framework and any other relevant Government security standards;

2.3.3.5 comply with the Baseline Security Requirements;

2.3.3.6 comply with the Authority's policies, including, where applicable, PSI 24/2014;

2.3.4 address any issues of incompatibility with the Supplier's organisational security policies;

2.3.5 address any specific security threats of immediate relevance to Information Assets and/or Authority Data;

2.3.6 document:

2.3.6.1 the security incident management processes, including reporting, recording and management of information risk incidents, including those relating to the ICT Environment (to the extent that this is within the control of the Supplier) and the loss of protected Personal Data, and the procedures for reducing and raising awareness of information risk;

2.3.6.2 incident response plans, including the role of nominated incident response companies; and

2.3.6.3 the vulnerability management policy, including processes for identification of system vulnerabilities and assessment of the potential effect on the Goods of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware, prioritisation of security patches, testing and application of security patches and the reporting and audit mechanism detailing the efficacy of the patching policy;

- 2.3.7 include procedures for the secure destruction of Information Assets and Authority Data and any hardware or devices on which such information or data is stored; and
- 2.3.8 be certified by or by a person with the direct delegated authority of the Supplier's representative appointed and/or identified in accordance with paragraph 1.3.
- 2.4 If the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies notified to the Supplier from time to time, the Supplier shall immediately notify the Authority of such inconsistency and the Authority shall, as soon as practicable, notify the Supplier of the provision that takes precedence.
- 2.5 The Supplier shall, upon request from the Authority or any accreditor appointed by the Authority, provide sufficient design documentation detailing the security architecture of its ISMS to support the Authority's and/or accreditor's assurance that it is appropriate, secure and complies with the Authority's requirements.
- 2.6 The Authority shall review the proposed ISMS submitted pursuant to paragraph 2.1 and shall, within 10 Working Days of its receipt notify the Supplier as to whether it has been approved.
- 2.7 If the ISMS is Approved, it shall be adopted by the Supplier immediately and thereafter operated and maintained throughout the Term in accordance with this Schedule 6.
- 2.8 If the ISMS is not Approved, the Supplier shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for approval. The Authority shall, within a further 10 Working Days notify the Supplier whether the amended ISMS has been approved. The Parties shall use reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 30 Working Days from the date of its first submission to the Authority. If the Authority does not approve the ISMS following its resubmission, the matter shall be resolved in accordance with clause I1 (Dispute Resolution).
- 2.9 Approval of the ISMS or any change to it shall not relieve the Supplier of its obligations under this Schedule 6.
- 2.10 The Supplier shall provide to the Authority, upon request, any or all ISMS documents.

3. SECURITY PLAN

- 3.1 The Supplier shall, within 30 Working Days of the Commencement Date, submit to the Authority for approval a Security Plan which complies with paragraph 3.2.
- 3.2 The Supplier shall effectively implement the Security Plan which shall:
- 3.2.1 comply with the Baseline Security Requirements;

- 3.2.2 identify the organisational roles for those responsible for ensuring the Supplier's compliance with this Schedule 6;
 - 3.2.3 detail the process for managing any security risks from those with access to Information Assets and/or Authority Data, including where held in the ICT Environment;
 - 3.2.4 set out the security measures and procedures to be implemented by the Supplier, which are sufficient to ensure compliance with the provisions of this Schedule 6;
 - 3.2.5 set out plans for transition from the information security arrangements in place at the Commencement Date to those incorporated in the ISMS;
 - 3.2.6 set out the scope of the Authority System that is under the control of the Supplier;
 - 3.2.7 be structured in accordance with ISO/IEC 27001: 2013 or equivalent unless otherwise Approved;
 - 3.2.8 be written in plain language which is readily comprehensible to all Staff and to Authority personnel engaged in supplying the Goods and reference only those documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule 6; and
 - 3.2.9 comply with the Security Policy Framework and any other relevant Government security standards.
- 3.3 The Authority shall review the Security Plan submitted pursuant to paragraph 3.1 and notify the Supplier, within 10 Working Days of receipt, whether it has been approved.
- 3.4 If the Security Plan is Approved, it shall be adopted by the Supplier immediately and thereafter operated and maintained throughout the Term in accordance with this Schedule 6.
- 3.5 If the Security Plan is not Approved, the Supplier shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for approval. The Authority shall notify the Supplier within a further 10 Working Days whether it has been approved.
- 3.6 The Parties shall use reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 30 Working Days from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter shall be resolved in accordance with clause 11 (Dispute Resolution).
- 3.7 Approval by the Authority of the Security Plan pursuant to paragraph 3.3 or of any change to the Security Plan shall not relieve the Supplier of its obligations under this Schedule 6.

4. REVISION OF THE ISMS AND SECURITY PLAN

4.1 The ISMS and Security Plan shall be reviewed in full and tested by the Supplier at least annually throughout the Term (or more often where there is a significant change to the Supplier System or associated processes or where an actual or potential Breach of Security or weakness is identified) to consider and take account of:

4.1.1 any issues implementing the Security Policy Framework and/or managing information risk;

4.1.2 emerging changes in Good Industry Practice;

4.1.3 any proposed or actual change to the ICT Environment and/or associated processes;

4.1.4 any new perceived, potential or actual security risks or vulnerabilities;

4.1.5 any ISO27001:2013 audit report or equivalent made in connection with the Certification Requirements which indicates concerns; and

4.1.6 any reasonable change in security requirements requested by the Authority.

4.2 The Supplier shall give the Authority the results of such reviews as soon as reasonably practicable after their completion, which shall include without limitation:

4.2.1 suggested improvements to the effectiveness of the ISMS, including controls;

4.2.2 updates to risk assessments; and

4.2.3 proposed modifications to respond to events that may affect the ISMS, including the security incident management processes, incident response plans and general procedures and controls that affect information security.

4.3 Following the review in accordance with paragraphs 4.1 and 4.2 or at the Authority's request, the Supplier shall give the Authority at no additional cost a draft updated ISMS and/or Security Plan which includes any changes the Supplier proposes to make to the ISMS or Security Plan. The updated ISMS and/or Security Plan shall, unless otherwise agreed by the Authority, be subject to clause F4 (Change) and shall not be implemented until Approved.

4.4 If the Authority requires any updated ISMS and/or Security Plan to be implemented within shorter timescales than those set out in clause F4, the Parties shall thereafter follow clause F4 for the purposes of formalising and documenting the relevant change for the purposes of the Contract.

5. CERTIFICATION REQUIREMENTS

5.1 The Supplier shall ensure that any systems, including the ICT Environment, on which Information Assets and Authority Data are stored and/or processed are certified as compliant with:

5.1.1 ISO/IEC 27001:2013 or equivalent by a UKAS approved certification body or are included within the scope of an existing certification of compliance with ISO/IEC 27001:2013 or equivalent unless otherwise Approved; and

5.1.2 the Government's Cyber Essentials Scheme at the BASIC level unless otherwise agreed with the Authority

and shall provide the Authority with evidence:

5.1.3 of certification before the Supplier accessed the ICT Environment and receives, stores, processes or manages any Authority Data; and

5.1.4 that such certification remains valid and is kept up to date while the Supplier (as applicable) continues to access the ICT Environment and receives, stores, processes or manages any Authority Data during the Term.

5.2 The Supplier shall ensure that it:

5.2.1 carries out any secure destruction of Information Assets and/or Authority Data at Supplier sites which are included within the scope of an existing certificate of compliance with ISO/IEC 27001:2013 or equivalent unless otherwise Approved; and

5.2.2 is certified as compliant with the CESS Assured Service (CAS) Service Requirement Sanitisation Standard or equivalent unless otherwise Approved

and the Supplier shall provide the Authority with evidence of its compliance with the requirements set out in this paragraph 5.2 before the Supplier may carry out the secure destruction of any Information Assets and/or Authority Data.

5.3 The Supplier shall notify the Authority as soon as reasonably practicable and, in any event within 2 Working Days, if the Supplier ceases to be compliant with the certification requirements in paragraph 5.1 and, on request from the Authority, shall:

5.3.1 immediately cease access to and use of Information Assets and/or Authority Data; and

5.3.2 promptly return, destroy and/or erase any Authority Data in accordance with the Baseline Security Requirements and failure to comply with this obligation is a material Default.

6. SECURITY TESTING

6.1 The Supplier shall, at its own cost, carry out relevant Security Tests from the Commencement Date and throughout the Term, which shall include:

6.1.1 a monthly vulnerability scan and assessment of the Supplier System and any other system under the control of the Supplier on which Information Assets and/or Authority Data are held;

6.1.2 an annual IT Health Check by an independent CHECK qualified company of the Supplier System and any other system under the control of the Supplier on which Information Assets and/or Authority Data are held and any additional IT Health Checks required by the Authority and/or any accreditor;

6.1.3 an assessment as soon as reasonably practicable following receipt by the Supplier of a critical vulnerability alert from a provider of any software or other component of the Supplier System and/or any other system under the control of the Supplier on which Information Assets and/or Authority Data are held; an

6.1.4 such other tests as are required:

6.1.4.1 by any Vulnerability Correction Plans;

6.1.4.2 by ISO/IEC 27001:2013 certification requirements or equivalent Approved;

6.1.4.3 after any significant architectural changes to the ICT Environment;

6.1.4.4 after a change to the ISMS (including security incident management processes and incident response plans) or the Security Plan; and

6.1.4.5 following a Breach of Security.

6.2 In relation to each IT Health Check, the Supplier shall:

6.2.1 agree with the Authority the aim and scope of the IT Health Check;

6.2.2 promptly, following receipt of each IT Health Check report, give the Authority a copy of the IT Health Check report;

6.2.3 if the IT Health Check report identifies any vulnerabilities:

6.2.3.1 prepare a Vulnerability Correction Plan for Approval which sets out in respect of each such vulnerability:

6.2.3.1.1 how the vulnerability will be remedied;

6.2.3.1.2 the date by which the vulnerability will be remedied;

6.2.3.1.3 the tests which the Supplier shall perform or procure to be performed (which may, at the Authority's discretion, include a further IT Health Check) to confirm that the vulnerability has been remedied;

6.2.3.2 comply with the Vulnerability Correction Plan; and

6.2.3.3 conduct further Security Tests as required by the Vulnerability Correction Plan.

- 6.3 Security Tests shall be designed and implemented by the Supplier so as to minimise any adverse effect on the Goods and the date, timing, content and conduct of Security Tests shall be agreed in advance with the Authority.
- 6.4 The Authority may send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Authority with the results of Security Tests (in a form to be Approved) as soon as practicable and in any event within 5 Working Days after completion of each Security Test.
- 6.5 Without prejudice to any other right of audit or access granted to the Authority pursuant to the Contract, the Authority and/or its authorised representatives, including any accreditor, may at any time to carry out Security Tests (including penetration tests) as it may deem necessary as part of any accreditation process and/or to verify the Supplier's compliance with the ISMS and the Security Plan:
- 6.5.1 upon giving reasonable notice to the Supplier where reasonably practicable to do so; and
- 6.5.2 without giving notice to the Supplier where, in the Authority's view, the provision of such notice may undermine the Security Tests to be carried out
- and, where applicable, the Authority shall be granted access to the Supplier's premises for the purpose of undertaking the relevant Security Tests.
- 6.6 If the Authority carries out Security Tests in accordance with paragraphs 6.5.1 or 6.5.2, the Authority shall (unless there is any reason to withhold such information) notify the Supplier of the results of the Security Tests as soon as possible and in any event within 5 Working Days after completion of each Security Test.
- 6.7 If any Security Test carried out pursuant to paragraphs 6.1 or 6.4 reveals any:
- 6.7.1 vulnerabilities during any accreditation process, the Supplier shall track and resolve them effectively; and
- 6.7.2 actual or potential Breach of Security or weaknesses (including unpatched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Authority of any proposed changes to the ICT Environment (to the extent that this is under the control of the Supplier) and/or to the ISMS and/or to the Security Plan (and the implementation thereof) which the Supplier intends to make in order to correct such failure or weakness. Subject to Approval and paragraphs 4.3 and 4.4, the Supplier shall implement such changes to the ICT Environment (to the extent that this is under the control of the Supplier) and/or the ISMS and/or the Security Plan and repeat the relevant Security Tests in accordance with an Approved timetable or, otherwise, as soon as reasonably practicable.
- 6.8 If the Authority unreasonably withholds its approval to the implementation of any changes to the ICT Environment and/or to the ISMS and/or to the Security Plan proposed by the Supplier in accordance with paragraph 6.7, the Supplier is not in breach of the Contract to the extent that it can be shown that such breach:

6.8.1 has arisen as a direct result of the Authority unreasonably withholding Approval to the implementation of such proposed changes; and

6.8.2 would have been avoided had the Authority Approved the implementation of such proposed changes.

6.9 If a change to the ISMS or Security Plan is to address any non-compliance with ISO/IEC 27001:2013 requirements or equivalent, the Baseline Security Requirements or any obligations in the Contract, the Supplier shall implement such change at its own cost and expense.

6.10 If any repeat Security Test carried out pursuant to paragraph 6.7 reveals an actual or potential breach of security or weakness exploiting the same root cause failure, such circumstance shall constitute a material Default.

6.11 On each anniversary of the Commencement Date, the Supplier shall provide to the Authority a letter from the individual appointed or identified in accordance with paragraph 1.3 confirming that having made due and careful enquiry:

6.11.1 the Supplier has in the previous year carried out all Security Tests according to this Schedule 6 and complied with all procedures in relation to security matters required under the Contract; and

6.11.2 the Supplier is confident that its security and risk mitigation procedures regarding Information Assets and Authority Data remain effective.

7. SECURITY AUDITS AND COMPLIANCE

7.1 The Authority and its authorised representatives may carry out security audits as it reasonably considers necessary in order to ensure that the ISMS is compliant with the principles and practices of ISO 27001: 2013 or equivalent (unless otherwise Approved), the requirements of this Schedule 6 and the Baseline Security Requirements.

7.2 If ISO/IEC 27001: 2013 certification or equivalent is provided, the ISMS shall be audited independently in accordance with ISO/IEC 27001: 2013 or equivalent. The Authority and its authorised representatives shall, where applicable, be granted access to the Supplier Sites and Sub-contractor premises for this purpose.

7.3 If, on the basis of evidence resulting from such audits, it is the Authority's reasonable opinion that ISMS is not compliant with any applicable principles and practices of ISO/IEC 27001: 2013 or equivalent, the requirements of this Schedule 6 and/or the Baseline Security Requirements is not being achieved by the Supplier, the Authority shall notify the Supplier of this and provide a reasonable period of time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) for the Supplier to implement any necessary remedy. If the Supplier does not ensure that the ISMS is compliant within this period of time, the Authority may obtain an independent audit of the ISMS to assess compliance (in whole or in part).

- 7.4 If, as a result of any such independent audit as described in paragraph 7.3 the Supplier is found to be non-compliant with any applicable principles and practices of ISO/IEC 27001:2013 or equivalent, the requirements of this Schedule 6 and/or the Baseline Security Requirements the Supplier shall, at its own cost, undertake those actions that are required in order to ensure that the ISMS is complaint and shall reimburse the Authority in full in respect of the costs obtaining such an audit.

8. SECURITY RISKS AND BREACHES

- 8.1 The Supplier shall use its reasonable endeavours to prevent any Breach of Security for any reason, including as a result of malicious, accidental or inadvertent behaviour.

- 8.2 If either Party becomes aware of a Breach of Security or an attempted Breach of Security it shall act in accordance with the agreed security incident management processes and incident response plans as set out in the ISMS.

- 8.3 Without prejudice to the security incident management processes and incident response plans set out in the ISMS and any requirements to report incidents in accordance with PSI 24/2014, upon becoming aware of any Breach of Security or attempted Breach of Security, the Supplier shall:

8.3.1 immediately notify the Authority and take all reasonable steps (which shall include any action or changes reasonably required by the Authority) that are necessary to:

8.3.1.1 minimise the extent of actual or potential harm caused by any Breach of Security;

8.3.1.2 remedy any Breach of Security to the extent that is possible and protect the integrity of the ICT Environment (to the extent that this is within its control) and ISMS against any such Breach of Security or attempted Breach of Security;

8.3.1.3 mitigate against a Breach of Security or attempted Breach of Security; and

8.3.1.4 prevent a further Breach of Security or attempted Breach of Security in the future resulting from the same root cause failure;

8.3.2 provide to the Authority and/or the Computer Emergency Response Team for UK Government (“GovCertUK”) or equivalent any data that is requested relating to the Breach of Security or attempted Breach of Security within 2 Working Days of such request; and

8.3.3 as soon as reasonably practicable and, in any event, within 2 Working Days following the Breach of Security or attempted Breach of Security, provide to the Authority full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or attempted Breach of Security, including a root cause analysis if required by the Authority

and the Supplier recognises that the Authority may report significant actual or potential losses of Personal Data to the Information Commissioner or equivalent and to the Cabinet Office.

- 8.4 If any action is taken by the Supplier in response to a Breach of Security or attempted Breach of Security which occurred as a result of non-compliance of the ISMS with any ISO/IEC 27001: 2013 requirements or equivalent (as applicable), the Baseline Security Requirements and/or the requirements of this Schedule 6, any such action and change to the ISMS and/or Security Plan as a result shall be implemented at the Supplier's cost.

IT Environment

- 8.5 The Supplier shall ensure that the Supplier System:

8.5.1 functions in accordance with Good Industry Practice for protecting external connections to the internet;

8.5.2 functions in accordance with Good Industry Practice for protection from malicious code;

8.5.3 provides controls to securely manage (store and propagate) all cryptographic keys to prevent malicious entities and services gaining access to them, in line with the Authority's Cryptographic Policy as made available to the Supplier from time to time;

8.5.4 is patched (and all of its components are patched) in line with Good Industry Practice, any Authority patching policy currently in effect and notified to the Supplier and any Supplier patch policy that is agreed with the Authority; and

8.5.5 uses the latest versions of anti-virus definitions, firmware and software available from industry accepted anti-virus software vendors.

- 8.6 Notwithstanding paragraph 8.5, if a Breach of Security is detected in the ICT Environment, the Parties shall co-operate to reduce the effect of the Breach of Security and, if the Breach of Security causes loss of operational efficiency or loss or corruption of Information Assets and/or Authority Data, assist each other to mitigate any losses and to recover and restore such Information Assets and Authority Data.

- 8.7 All costs arising out of the actions taken by the Parties in compliance with paragraphs 8.2, 8.3 and 8.6 shall be borne by:

8.7.1 the Supplier if the Breach of Security originates from the defeat of the Supplier's security controls or Information Assets and/or Authority Data is lost or corrupted whilst under the control of the Supplier or its Sub-contractor; or

8.7.2 the Authority if the Breach of Security originates from the defeat of the Authority's security controls or Information Assets and/or Authority Data is lost or corrupted whilst under the control of the Authority

and each Party shall bear its own costs in all other cases.

9. VULNERABILITIES AND CORRECTIVE ACTION

9.1 The Parties acknowledge that from time to time vulnerabilities in the ICT Environment and ISMS will be discovered which, unless mitigated, will present an unacceptable risk to Information Assets and/or Authority Data.

9.2 The severity of any vulnerabilities shall be categorised by the Supplier as '*Critical*', '*Important*' and '*Other*' according to the agreed method in the ISMS and using any appropriate vulnerability scoring systems.

9.3 The Supplier shall procure the application of security patches to vulnerabilities categorised as '*Critical*' within 7 days of public release, vulnerabilities categorised as '*Important*' within 30 days of public release and vulnerabilities categorised as '*Other*' within 60 days of public release, except where:

9.3.1 the Supplier can demonstrate that a vulnerability is not exploitable within the context of the Goods being supplied, including where it resides in a software component which is not being used, provided that, where those vulnerabilities become exploitable, they are remedied by the Supplier within the timescales in paragraph 9.3;

9.3.2 the application of a security patch in respect of a vulnerability categorised as '*Critical*' or '*Important*' adversely affects the Supplier's ability to deliver the Goods, in which case the Supplier shall be granted an extension to the timescales in paragraph 9.3 of 5 days, provided that the Supplier continues to follow any security patch test plan agreed with the Authority; or

9.3.3 the Authority agrees a different timescale after consultation with the Supplier in accordance with the processes defined in the ISMS.

9.4 The ISMS and the Security Plan shall include provision for the Supplier to upgrade software throughout the Term within 6 months of the release of the latest version unless:

9.4.1 upgrading such software reduces the level of mitigation for known threats, vulnerabilities or exploitation techniques, provided always that such software is upgraded by the Supplier within 12 months of release of the latest version; or

9.4.2 otherwise agreed with the Authority in writing.

9.5 The Supplier shall:

9.5.1 implement a mechanism for receiving, analysing and acting upon threat information provided by GovCertUK, or any other competent Central Government Body;

9.5.2 ensure that the ICT Environment (to the extent that this is within the control of the Supplier) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;

9.5.3 ensure that it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the ICT Environment (to the extent that this is within the control of the Supplier) by actively monitoring the threat landscape during the Term;

9.5.4 pro-actively scan the ICT Environment (to the extent that this is within the control of the Supplier) for vulnerable components and address discovered vulnerabilities through the processes described in the ISMS;

9.5.5 from the Commencement Date and within 5 Working Days of the end of each subsequent month during the Term provide a report to the Authority detailing both patched and outstanding vulnerabilities in the ICT Environment (to the extent that this is within the control of the Supplier) and any elapsed time between the public release date of patches and either the time of application or, for outstanding vulnerabilities, the time of issue of such report;

9.5.6 propose interim mitigation measures in respect of any vulnerabilities in the ICT Environment (to the extent this is within the control of the Supplier) known to be exploitable where a security patch is not immediately available;

9.5.7 remove or disable any extraneous interfaces, services or capabilities that are no longer needed for the provision of the Goods (in order to reduce the attack surface of the ICT Environment to the extent this is within the control of the Supplier); and

9.5.8 inform the Authority when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the IT Environment (to the extent this is within the control of the Supplier) and provide initial indications of possible mitigations

9.6 If the Supplier is unlikely to be able to mitigate any vulnerability within the timescales in paragraph 9.3, the Supplier shall notify the Authority immediately.

9.7 Any failure by the Supplier to comply with paragraph 9.3 shall constitute a material Default.

10. SUB-CONTRACTS

10.1 The Supplier shall ensure that all Sub-Contracts with Sub-Contractors who have access to Information Assets and/or Authority Data contain equivalent provisions in relation to information assurance and security that are no less onerous than those imposed on the Supplier under the Contract.

ANNEX 1 – BASELINE SECURITY REQUIREMENTS

1 Security Classifications and Controls

- 1.1 The Supplier shall, unless otherwise Approved in accordance with paragraph 6.2 of this Annexe 1, only have access to and handle Information Assets and Authority Data that are classified under the Government Security Classifications Scheme as OFFICIAL.
- 1.2 There may be a specific requirement for the Supplier in some instances on a limited 'need to know basis' to have access to and handle Information Assets and Authority Data that are classified as 'OFFICIAL-SENSITIVE.'
- 1.3 The Supplier shall apply the minimum security controls required for OFFICIAL information and OFFICIAL-SENSITIVE information as described in Cabinet Office guidance, currently at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251480/Government-Security-Classifications-April-2014.pdf
- 1.4 The Supplier shall be able to demonstrate to the Authority and any accreditor that it has taken into account the "Technical Controls Summary" for OFFICIAL (in the above guidance) in designing and implementing the security controls in the Supplier System, which shall be subject to assurance and accreditation to Government standards.
- 1.5 Additional controls may be required by the Authority and any accreditor where there are aspects of data aggregation.

2 End User Devices

- 2.1 Authority Data shall, wherever possible, be held and accessed on paper or in the ICT Environment on secure premises and not on removable media (including laptops, removable discs, CD-ROMs, USB memory sticks, PDAs and media card formats) without Approval. If Approval is sought to hold and access data by other means, the Supplier shall consider the second-best option and third best option below and record the reasons why a particular approach should be adopted when seeking Approval:
 - 2.1.1 second best option means: secure remote access so that data can be viewed or amended over the internet without being permanently stored on the remote device, using products meeting the FIPS 140-2 standard or equivalent, unless Approved;
 - 2.1.2 third best option means: secure transfer of Authority Data to a remote device at a secure site on which it will be permanently stored, in which case the Authority Data and any links to it shall be protected at least to the FIPS 140-2 standard or equivalent, unless otherwise Approved, and noting that protectively marked Authority Data must not be stored on privately owned devices unless they are protected in this way.

- 2.2 The right to transfer Authority Data to a remote device should be carefully considered and strictly limited to ensure that it is only provided where absolutely necessary and shall be subject to monitoring by the Supplier and Authority.
- 2.3 Unless otherwise Approved, when Authority Data resides on a mobile, removable or physically uncontrolled device, it shall be:
- 2.3.1 the minimum amount that is necessary to achieve the intended purpose and should be anonymised if possible;
- 2.3.2 stored in an encrypted form meeting the FIPS 140-2 standard or equivalent and using a product or system component which has been formally assured through a recognised certification process of CESG to at least Foundation Grade, for example, under the CESG Commercial Product Assurance scheme (“CPA”) or equivalent, unless otherwise Approved;
- 2.3.3 protected by an authentication mechanism, such as a password; and
- 2.3.4 have up to date software patches, anti-virus software and other applicable security controls to meet the requirements of this Schedule 6.
- 2.4 Devices used to access or manage Authority Data shall be under the management authority of the Supplier and have a minimum set of security policy configurations enforced. Unless otherwise Approved, all Supplier devices shall satisfy the security requirements set out in the CESG End User Devices Platform Security Guidance (“CESG Guidance”) (<https://www.gov.uk/government/collections/end-user-devices-security-guidance--2>) or equivalent.
- 2.5 Where the CESG Guidance highlights shortcomings in a particular platform the Supplier may wish to use, then these should be discussed with the Authority and a joint decision shall be taken on whether the residual risks are acceptable. If the Supplier wishes to deviate from the CESG Guidance, this should be agreed in writing with the Authority on a case by case basis.

3 Data Storage, Processing, Management, Transfer and Destruction

- 3.1 The Parties recognise the need for Authority Data to be safeguarded and for compliance with the Data Protection Legislation. To that end, the Supplier shall inform the Authority the location within the United Kingdom where Authority Data is stored, processed and managed. The import and export of Authority Data from the Supplier System must be strictly controlled and recorded.
- 3.2 The Supplier shall inform the Authority of any changes to the location within the United Kingdom where Authority Data is stored, processed and managed and shall not transmit, store, process or manage Authority Data outside of the United Kingdom without Approval which shall not be unreasonably withheld or delayed provided that the transmission, storage, processing and management of Authority Data offshore is within:
- 3.2.1 the European Economic Area (“EEA”); or
- 3.2.2 another country or territory outside the EEA if that country or territory ensures an adequate level of protection by reason of its domestic law or of

the international commitments it has entered into which have been defined as adequate by the European Commission.

- 3.3 The Supplier System shall support the requirement of the Authority to comply with Government policy and Cabinet Office guidance on Offshoring, currently set out at:

<https://ogsirooffshoring.zendesk.com/hc/en-us/articles/203107991-HMG-sOffshoring-Policy>

by assessing, as required, any additional security risks associated with the storage, processing and/or transmission of any data and/or information offshore, including by an offshore Supplier (which may include the use of 'landed resources'), taking account of European Union requirements to confirm the 'adequacy' of protection of Personal Data in the countries where storage, processing and/or transmission occurs. No element of the Supplier System may be off-shored without Approval.

- 3.4 The Supplier shall ensure that the Supplier System provides internal processing controls between security domains to prevent the unauthorised high domain exporting of Authority Data to the low domain if there is a requirement to pass data between different security domains.

- 3.5 The Supplier shall ensure that any electronic transfer of Authority Data:

3.5.1 protects the confidentiality of the Authority during transfer through encryption suitable for the impact level of the data;

3.5.2 maintains the integrity of the Authority Data during both transfer and loading into the receiving system through suitable technical controls for the impact level of the data; and

3.5.3 prevents the repudiation of receipt through accounting and auditing.

- 3.6 The Supplier shall:

3.6.1 protect Authority Data, including sensitive Personal Data, whose release or loss could cause harm or distress to individuals and ensure that it is handled as if it was confidential while it is stored and/or processed;

3.6.2 ensure that any OFFICIAL-SENSITIVE information, including sensitive Personal Data is encrypted in transit and when at rest when stored away from the Supplier's controlled environment;

3.6.3 on demand, provide the Authority with all Authority Data in an agreed open format;

3.6.4 have documented processes to guarantee availability of Authority Data if it ceases to trade;

3.6.5 securely destroy all media that has held Authority Data at the end of life of that media in accordance with any requirements in the Contract and, in the absence of any such requirements, in accordance with Good Industry Practice;

3.6.6 securely erase any or all Authority Data held by the Supplier when requested to do so by the Authority;

3.6.7 ensure that all material used for storage of Confidential Information is subject to controlled disposal and the Supplier shall:

3.6.7.1 destroy paper records containing protected Personal Data by incineration, pulping or shredding so that reconstruction is unlikely; and

3.6.7.2 dispose of electronic media that has been used for the processing or storage of protected Personal Data through secure destruction, overwriting, erasure or degaussing for re-use.

4 Networking

4.1 Any Authority Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted using a product or system component which has been formally assured through a certification process recognised by CESG, to at least Foundation Grade, for example, under CPA or through the use of Public Sector Network (“PSN”) compliant encrypted networking services or equivalent unless none are available in which case the Supplier shall agree the solution with the Authority.

4.2 The Authority requires that the configuration and use of all networking equipment in relation to the supply of the Goods, including equipment that is located in secure physical locations, is at least compliant with Good Industry Practice.

4.3 The Supplier shall ensure that the ICT Environment (to the extent this is within the control of the Supplier) contains controls to maintain separation between the PSN and internet connections if used.

5 Security Architectures

5.1 When designing and configuring the ICT Environment (to the extent that this is within the control of the Supplier) the Supplier shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or those with a CESG Certified Professional certification (<http://www.cesg.gov.uk/awarenesstraining/IA-certification/Pages/index.aspx>) or equivalent for all bespoke or complex components.

5.2 The Supplier shall provide to the Authority and any accreditor sufficient design documentation detailing the security architecture of the ICT Environment and data transfer mechanism to support the Authority’s and any accreditor’s assurance that this is appropriate, secure and compliant with the Authority’s requirements.

5.3 The Supplier shall apply the ‘*principle of least privilege*’ (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of the ICT Environment used for the storage, processing and management of Authority Data. Users should only be granted the minimum necessary permissions to access Information Assets and

Authority Data and must be automatically logged out of the Supplier System if an account or session is inactive for more than 15 minutes.

6 Digital Continuity

The Supplier shall ensure that each Information Asset is held in an appropriate format that is capable of being updated from time to time to enable the Information Asset to be retrieved, accessed, used and transferred to the Authority, including in accordance with any information handling procedures set out in PSI 24/2014.

7 Personnel Vetting and Security

- 7.1 All Staff shall be subject to pre-employment checks that include, as a minimum, their employment history for at least the last 3 years, identity, unspent criminal convictions and right to work (including nationality and immigration status) and shall be vetted in accordance with:

7.1.1 the BPSS or BS7858 or equivalent; and

7.1.2 PSI 07/2014 based on their level of access to Information Assets and/or Authority Data.

- 7.2 If the Authority agrees that it is necessary for any Staff to have logical or physical access to Information Assets and/or Authority Data classified at a higher level than OFFICIAL (such as that requiring 'SC' clearance), the Supplier shall obtain the specific government clearances that are required for access to such Information Assets and/or Authority Data.
- 7.3 The Supplier shall prevent Staff who are unable to obtain the required security clearances from accessing Information Assets and/or Authority Data and/or the ICT Environment used to store, process and/or manage such Information Assets or Authority Data.
- 7.4 The Supplier shall procure that all Staff comply with the Security Policy Framework and principles, obligations and policy priorities stated therein, including requirements to manage and report all security risks in relation to the supply of the Goods.
- 7.5 The Supplier shall ensure that Staff who can access Information Assets and/or Authority Data and/or the ICT Environment are aware of their responsibilities when handling such information and data and undergo regular training on secure information management principles. Unless otherwise Approved, this training must be undertaken annually.
- 7.6 If the Supplier grants Staff access to Information Assets and/or Authority Data, those individuals shall be granted only such levels of access and permissions that are necessary for them to carry out their duties. Once Staff no longer require such levels of access or permissions or leave the organisation, their access rights shall be changed or revoked (as applicable) within one Working Day.

8 Identity, Authentication and Access Control

- 8.1 The Supplier shall operate a robust role-based access control regime, including network controls, to ensure all users and administrators of and those maintaining the ICT Environment are uniquely identified and authenticated when accessing or administering the ICT Environment to prevent unauthorised users from gaining access to Information Assets and/or Authority Data. Applying the '*principle of least privilege*', users and administrators and those responsible for maintenance shall be allowed access only to those parts of the ICT Environment they require. The Supplier shall retain an audit record of accesses and users and disclose this to the Authority upon request.
- 8.2 The Supplier shall ensure that Staff who use the Authority System actively confirm annually their acceptance of the Authority's acceptable use policy.

9 Physical Media

- 9.1 The Supplier shall ensure that:
- 9.1.1 all OFFICIAL information is afforded physical protection from internal, external and environmental threats commensurate with the value to the Authority of that information;
 - 9.1.2 all physical components of the Supplier System are kept in secure accommodation which conforms to the Security Policy Framework and CESG standards and guidance or equivalent;
 - 9.1.3 all physical media holding OFFICIAL information is handled in accordance with the Security Policy Framework and CESG standards and guidance or equivalent; and
 - 9.1.4 all Information Assets and Authority Data held on paper are:
 - 9.1.4.1 kept secure at all times, locked away when not in use on the premises on which they are held and secured and are segregated if the Supplier is co-locating with the Authority; and
 - 9.1.4.2 only transferred by an approved secure form of transfer with confirmation of receipt obtained.

10 Audit and Monitoring

- 10.1 The Supplier shall implement effective monitoring of its information assurance and security obligations in accordance with Government standards and where appropriate, in accordance with CESG Good Practice Guide 13 – Protective Monitoring or equivalent.
- 10.2 The Supplier shall collect audit records which relate to security events in the ICT Environment (where this is within the control of the Supplier), including those that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness, such Supplier audit records shall include:

10.2.1 logs to facilitate the identification of the specific asset which makes every outbound request external to the ICT Environment (to the extent it is within the control of the Supplier). To the extent the design of the ICT Environment allows, such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers;

10.2.2 regular reports and alerts giving details of access by users of the ICT Environment (to the extent that it is within the control of the Supplier) to enable the identification of changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Authority Data; and

10.2.3 security events generated in the ICT Environment (to the extent it is within the control of the Supplier) including account logon and logoff events, start and end of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.

10.3 The Parties shall work together to establish any additional audit and monitoring requirements for the ICT Environment.

10.4 The Supplier shall retain audit records collected in compliance with paragraph 10.1 for at least 6 months.

SCHEDULE 7 - PRISONS

ACCESS TO PRISONS

- 1 If Staff are required to have a pass for admission to an Authority Premises which is a prison, (a “**Prison**”) the Authority shall, subject to satisfactory completion of approval procedures, arrange for passes to be issued. Any member of the Staff who cannot produce a proper pass when required to do so by any member of the Authority’s personnel, or who contravenes any conditions on the basis of which a pass was issued, may be refused admission to a Prison or be required to leave a Prison if already there.
- 2 Staff shall promptly return any pass if at any time the Authority so requires or if the person to whom the pass was issued ceases to be involved in the supply of the Goods. The Supplier shall promptly return all passes on expiry or termination of the Contract.
- 3 Staff attending a Prison may be subject to search at any time. Strip searches shall be carried out only on the specific authority of the Authority under the same rules and conditions applying to the Authority’s personnel. The Supplier shall comply with Rule 71 of Part IV of the Prison Rules 1999 as amended by the Prison (Amendment) Rules 2005 and Rule 75 of Part IV of the Young Offender Institution Rules 2000 as amended by the Young Offender Institution (Amendment) Rules 2005.
- 4 Searches shall be conducted only on the specific authority of the Authority under the same rules and conditions applying to the Authority’s personnel and/or visitors. The Supplier is referred to Section 8 of the Prison Act 1952, Rule 64 of the Prison Rules 1999 and PSI 67/2011.

SECURITY

- 5 Whilst at Prisons Staff shall comply with all security measures implemented by the Authority in respect of staff and other persons attending Prisons. The Authority shall provide copies of its written security procedures to Staff on request. The Supplier and all Staff are prohibited from taking any photographs at Prisons unless they have Approval and the Authority’s representative is present so as to have full control over the subject matter of each photograph to be taken. No such photograph shall be published or otherwise circulated without Approval.
- 6 The Authority may search vehicles used by the Supplier or Staff at Prisons.
- 7 The Supplier and Staff shall co-operate with any investigation relating to security which is carried out by the Authority or by any person who is responsible for security matters on the Authority’s behalf, and when required by the Authority shall:
 - 7.1 take all reasonable measures to make available for interview by the Authority any members of Staff identified by the Authority, or by someone responsible for security matters, for the purposes of investigation. Staff may be accompanied by and be advised or represented by another person whose attendance at the interview is acceptable to the Authority; and

7.2 subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind and in whatever form which may be reasonably required by the Authority, or by a person who is responsible for security matters on the Authority's behalf, for the purposes of investigation as long as providing that material does not prevent the Supplier from supplying the Goods.

The Authority may retain any such material in connection with the investigation and, as far as possible, may provide the Supplier with a copy of any material retained.

OFFENCES AND AUTHORISATION

8 In supplying the Goods the Supplier shall comply with PSI 10/2012.

9 Nothing in the Contract is deemed to provide any "authorisation" to the Supplier in respect of any provision of the Prison Act 1952, Offender Management Act 2007, Crime and Security Act 2010, Serious Crime Act 2015 or other relevant legislation.

SCHEDULE 8 - MONITORING SCHEDULE

SPECIAL CONDITIONS: MONITORING AND MANAGEMENT INFORMATION

Authority's Monitoring Requirements

1. Throughout the life of the contract the Contractors contract performance will be measured against identified Key Performance Indicators and specific Service Levels to evidence that the Contractor is fulfilling the contract requirements.
2. The contractor will be required to provide detailed and specific Contract Management Information (MI) to the Authority as contained within this schedule, against identified Key Performance Indicators and record their service level in achieving a defined target of service level. The supply of accurate information and performance in meeting those Service Levels is deemed material to the performance of the contract.
3. The contractor shall ensure that they are fully capable of gathering data and set up reports at the commencement of the contract and account set up.

Management Information Reporting Requirements

4. The supply of Management Information is a requirement of the contract to allow the Authorities contract manager to track sales, demand and manage inventory.
5. The format of the reporting fields shall be stipulated by the Authority. The Contractor should be aware that Management Information may be requested via email or a request submitted via the MoJ e-Sourcing Portal in the form of Requests for Information (RFI's). The Authority is currently developing its electronic Procurement portfolio and may request that the Contractor takes part in electronic contract monitoring via the e-Sourcing Portal Contractor Performance Management module (SPM).
6. The method of performance reporting via SPM will be shared with the Contractor and feedback given following requests for information.
7. **The information shall be supplied free of charge to the Authority.**
8. The Contractor is required to structure all ordering locations with suitable identifiers to allow spend information to be split by organisation and location.
9. Individual ordering locations will, upon request, identify which of the above constituent organisation parts they fall within as part o sub account set ups with the Contractor.

Reports Required

Core / Non-Core Sales Report	Quarterly – <i>unless requested for specific purpose</i>	Report highlighting sales split between core and non-core items by product code.
Location Sales Report	Ad hoc upon request (5 day lead time)	Report highlighting sales over a specific period for specific locations or organisation entities including Order Numbers, Product Codes, Product Description, Unit cost, Unit Sales and Cumulative Cost.
Individual Product Sales Report	Ad hoc upon request (5 day lead time)	Report highlighting sales and Returns for specific or a range of products over a defined period. Format issued upon request

Contractors Performance Reporting

10. The Contractor is required to report various contract management information throughout the life of the contract to the Authorities Contract Manager. Performance reporting shall be supplied in an electronic format in line with the specified frequencies held within the table below.

Reports	Frequency	Description
Order Fulfilment Report	Quarterly – (in line with price sets) <i>unless requested for specific purpose</i>	Report highlighting orders fulfilled at first time of asking for each month. Orders unfulfilled at first request must be filtered by location and product type to assist both parties in identifying problem areas or supply chains.
Back Order Report	Quarterly – (in line with price sets) <i>unless requested for specific purpose</i>	Report Highlighting all orders received not yet dispatched. Include Original Order Number, Item description, received date, Quantity ordered, Quantity demanded.

Lead time Report	Adhoc upon Request	Report highlighting sales lead times for delivery over a specific period, including order number, description, number of items ordered, received date.
Inventory levels per item	Ad hoc upon Request	Contractors Stock inventory report over a specific period relating to specific lines, day by day.
Faulty & Incorrect Returns by line	Adhoc upon Request	Report highlighting lines which have been returned as faulty or delivered in error. Available by location and by product type. To include date agreed for collection and actual collection date.
POD Report	Ad hoc upon request (5 day lead time)	Report showing proof of deliveries requested and the date provided, highlighting the % provided within 5 working days.
Credit Note Report	Ad hoc upon request (5 day lead time)	Report showing credit notes raised over a period, including. Date request made & date credited note dispatch, purchase order number.

Key Performance Indicators

11. Throughout the life of the contract, Contractors performance will be measured and reported against Key Performance Indicators for each month as detailed in the table below.

Table Heading Definitions

(a) KPI – Key Performance Indicator Name

(b) Description – A brief description of the KPI and what the measurement relates to

(c) Service Level – The level of service which is to be delivered by the contractor during the life of the contract. Percentage compliance is measured on a monthly basis.

(a) KPI	(b) Description	(c) Service Level
% orders compliant with Delivery Lead Times and Order Fulfilment	Products delivered within agreed contract delivery lead times	98.5% first time, on time order fulfilment
Report Deadlines	Timely submission of reports against agreed frequency or lead times 5 working days.	Specified Frequent reports 98% ad hoc Reports 95%
Faulty Goods Up lift	Faulty goods collected within agreed lead times.	95%
Faulty Goods	Percentage of goods classified as faulty.	1%
Compliance with product Specification	Compliance with product specification.	100% except where approval has been given by the MoJ Contract Manager.
Compliance with Contract Terms and Conditions	Compliance with contract terms and conditions.	100% at all times
% Compliant Invoices submitted	Compliant Invoices submitted in accordance with 2.12 of specification	99% of all invoices containing the relevant information for processing.
Credit Notes Processing	Credit Note processed within 4 weeks.	99% of all credit notes actioned within 4 weeks
Proof of Delivery	Proof of Delivery (P.O.D) provided within 5 working days of request.	98% provided within 5 working days.

Service Improvements Notification

12. Non Compliance with the above performance targets may result in one written warning to implement an agreed Service Improvement Plan within 10 Working Days and thereafter for repeated or material ongoing poor performance termination shall be issued (notice period as per Terms and Conditions 37 – Termination on Default).
13. Service improvement plans will be submitted within 10 working days unless otherwise agreed between the parties. The plan will incorporate the contractors proposals for improvement over a four week period, at the end of which service levels are to be returned to the agreed levels.

14. For minor, accepted or agreed non compliance the Authority may take measures including:

- (a) Temporary purchase of specifically affected items from an alternate source until satisfactory improvement has been demonstrated.
- (b) Permanent removal of specifically affected items from the contract
- (c) Enhanced monitoring of Key Performance Indicators and service levels and increase in the frequency of Requests for information.
- (d) Requesting face to face meetings or site visits to propose solution within agreed timescales.

15. In keeping with the vision of the Contract, both parties will work co-operatively to improve service levels to an acceptable standard before reverting to formal improvement measures.

Service Improvement Notices & Plans

15. Each Service Improvement Notice will require the contractor to submit a Service Improvement Plan. Each Improvement Plan shall be sequentially numbered from a central register maintained by the Authority.

16. The Service Improvement Notice and subsequent plan will be applicable to all instances where the nature of the failure or complaint is related to one common service element e.g. If the contractor fails to adhere to the contract requirements for compliant order requests to be delivered within the agreed timescales, they may be issued with a Service Improvement Notice by the Authority. Any subsequent failure (subject to the duration of the improvement notice) to submit the same, irrespective of location, type or requestor, will be considered to be within the scope of the original improvement notice.

17. In the event a further unconnected circumstance occurs which results in the failure to meet the contract requirements a separate Improvement Notice/plan shall be issued /requested and recorded in the central register under a separate sequential number.

18. A report on progress against each open Improvement Plan shall be provided at each Contract Review Meeting or as requested.

Management Information Fields to be supplied to the Authority and the Cabinet Office

- Line Item Amount
- Invoice Line Description
- Invoice Line Number
- Currency Code
- Order Date
- VAT Inclusion Flag
- VAT Rate

- List Price
- Number of Items
- Unit of Purchase**
- Unit of Purchase Quantity
- Price per Unit
- Supplier Product / Service Code
- Product description
- Product / Service Level 1(Product or Service Name)
- Product / Service Level 2
- Product / Service Level 3
- Product / Service Level 4
- Product / Service Level 5
- UNSPSC Code
- Taxonomy Code
- Taxonomy Name
- Geographical
- Project Code
- Project description
- Project Start Date
- Project Delivery Date (Estimate and Actual)
- Total project cost
- Project Stage



Ministry
of Justice

SCHEDULE 9 – Signatures

IN WITNESS of which the Contract is duly executed by the Parties on the date which appears at the head of page 1.

Redacted





SCHEDULE 10 – Supplier's tender submission

2 Technical Envelope			
2.1 Tender Submission Compliance			
	Question	Description	Response
2.1.1	Form of Tender	(*) Please confirm that you have read, understood and accept the Form of Tender (attached). Note: Bidders will be excluded from further consideration for a negative response.	
2.1.2	Terms and Conditions	(*) Please confirm that you have read, understood and accept the Proposed Terms and Conditions (attached)	
2.1.3	Terms and Conditions	Please submit any proposed amendment to the Terms and Conditions using the attached form. . Note: Bidders' proposed amendments will not be accepted if detrimental to the operational need or commercial requirements of the Authority. Please note that proposed amendments will not be automatically accepted. Proposed amendments may be considered by the Authority. The Authority will not accept any further proposed amendment or enter into negotiation of terms upon the bidder being successful within this exercise. The Authority has expressed rights to reject any proposed amendment and non-compliance with the Authority's requirements could lead to the exclusion of the Bidder from the exercise.	

2.1.4	Statements of Acceptance	<p>(*) I warrant that I have the requisite corporate authority to submit this tender.</p> <p>I understand that the Authority is not bound to accept the lowest or any Tender. I also understand the Authority has the right to accept only part of a Tender unless I have expressly stipulated otherwise.</p> <p>I accept that: This Tender shall remain open for acceptance by the Authority for a period of three months after the due date for return of tenders specified in your Invitation to Tender.</p> <p>I confirm that parts of my tender submission may be incorporated into the final Contract Document, in particular those areas where service levels, lead times and details of logistics arrangements are detailed.</p>	
2.1.5	Response to Specification	(*) Please confirm that you can meet all aspects of the requirement as detailed in the attached Specification Document.	
2.2 Regulatory			
	Question	Description	
2.2.1	Country of Origin	(*) Please complete the attached Certificate of Country of Origin form outlining the main ingredients in the foodstuffs tendered e.g. Soya, Wheat, Corn etc.	

2.2.2	Compliance to all Relevant Statutory Legislation	(*) Please confirm that your organisation is compliant with all current and relevant statutory legislation including but not limited to those for farmed animal and livestock feed and will comply with any new and relevant legislation in the future regarding their business operations and the supply of goods. Bidders will be excluded from further consideration for a negative response.	
2.2.3	Health and Safety	(*) Please self-certify that you have an adequate health and safety policy. Note: UK employers with fewer than five employees are not required by law to have a health and safety policy and will not be excluded for this reason.	
2.3 Assurance of Supply			
	Question	Description	
2.3.1	Stock Planning	(*) Please confirm that you have sufficient capacity to meet estimated demand including additional commitment during mobilisation stages and describe how this is to be done.	
2.3.2	Stock Management	(*) Please provide details of your stock management systems in terms of managing stock ordering and distribution, including ERP or EPOS systems.	
2.4 Quality Management			
	Question	Description	

2.4.1	Suitability of Foodstuff	<p>(*) Please give details of your specific ingredients and product data sheets, including any additives, for livestock feed as per specification.</p> <p>Note: Bidders will be evaluated to ensure that ingredients are suitable for best possible dietary requirements and maximum yield compared with existing quality of food. Bidders may be excluded where ingredients/additives are not considered acceptable or comparable to existing quality.</p>	
2.4.2	Quality Management Process	<p>(*) Please give details of your quality management processes and procedures in place for handling customer orders, stock distribution, after sales and dealing with back orders and dispatch. This should include an end to end process description of an order.</p> <p>Note: Bidders will be evaluated to ensure that the end to end process is clearly defined and that robust quality controls and stock management processes are in place.</p>	
2.4.3	Forage Analysis	<p>(*) Please confirm you are able to visit Prison Farms; (offer a forage analyses service and advise on livestock feed requirements based on those analyses) analyse the forage and advise on any changes required to livestock diets. Please also demonstrate how this process would be carried out.</p> <p>Note: Bidders will be evaluated to ensure that they have the ability to perform feed analysis on site (these are sent off for analyses) and advise relevant farm staff of any changes required to feed.</p>	

2.5 Logistics & Delivery (including Implementation)			
	Question	Description	
2.5.1	Lead Times and Delivery	<p>(*) Please provide details of your product lead times from the placement of MoJ orders to end delivery to the customer. Also provide details of your logistics or third party delivery providers including delivery timescales, collection timescales, waiting times and delivery abortion details.</p> <p>Note: Bidders will be evaluated to ensure that the lead times are reasonable and do not cause excessive waiting times.</p> <p>Bidders will be evaluated to ensure that any deliveries to HM Prisons locations are compatible, including minor delays experienced delivering into secure locations. (See Drivers' Handbook) attached for more information).</p>	
2.5.2	Minimum Order Quantities	<p>(*) Please indicate your order quantities for both loose and palletised feeds (or a mixed pallet of feed) to include any price break levels for larger orders and haulage charges.</p> <p>Note: Bidders will be evaluated to ensure minimum order quantities are not too high compared to what establishments can store and that haulage charges are not excessive.</p>	
2.5.3	Contract Mobilisation Plan & Product Sourcing Lead Times	<p>(*) Please outline your proposed contract mobilisation timescales to include product sourcing lead times from manufacturers, highlighting all relevant key stages. Please refer to timetable in the Instructions to Tender document.</p> <p>Note: Bidders will be evaluated to ensure they have captured the relevant events in mobilisation.</p>	

2.5.4	Delivery Paperwork Compliance	<p>(*) Please submit a copy of your compliant delivery note against the authority's specification requirements.</p> <p>Note: Bidders will be evaluated to ensure the relevant information is captured.</p>	
2.6 Service Levels			
	Question	Description	
2.6.1	KPI Compliance	<p>(*) Please give details of how you propose to capture and process contract management information in accordance with the requirements within the Reporting Schedule in the proposed Terms and Conditions.</p> <p>Note: Bidders will be evaluated to ensure that they cover the required level of reporting to allow the Authority to obtain meaningful product and spend information by location.</p>	
2.6.2	Ordering Methods	<p>(*) Please describe your ordering methods to customers, how orders are accepted, actioned and followed up if necessary.</p> <p>Note: Bidders must meet a minimum requirement of receiving purchase orders electronically by email and should accept invoice settlement by BACS as a minimum.</p>	

2.6.3	Invoice Compliance & Submission	<p>(*) Please attach a copy of your invoice to this question. Please refer to Invoice Processing: A quick guide for suppliers attachment.</p> <p>Note: Bidders will be evaluated to ensure that the bidder's invoice can be scanned electronically by the Authority's software program, that it is compatible with our process and that the relevant information extracted to match existing purchase orders.</p>	
2.6.4	Dispute Resolution	<p>(*) Please describe your processes for dealing with complaints and dispute resolution for both customers and the contract manager. Please include relevant points of contact.</p> <p>Note: Bidders will be evaluated to ensure that there is a clear escalation process and that relevant functions, reference numbers, contact numbers, and email addresses are included.</p>	
2.7 Environmental Considerations			
	Question	Description	
2.7.1	Environmental Considerations	<p>(*) Please identify any environmental initiatives that lead to reduction in the environmental impact of your organisation including carbon footprint reduction.</p> <p>Bidders will be evaluated to ensure they take practical steps to minimise environmental effects.</p>	

2.7.2	Environmental Considerations	Please attach any relevant documentation in relation to environmental initiatives / Policies in place within your organisation.
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2.8 Armed Forces Covenant

	Note	Note Details
2.8.1	Note	<p>1. The Armed Forces Covenant is a public sector pledge from Government, businesses, charities and organisations to demonstrate their support for the armed forces community. The Covenant was brought in under the Armed Forces Act 2011 to recognise that the whole nation has a moral obligation to redress the disadvantages the armed forces community face in comparison to other citizens, and recognise sacrifices made.</p> <p>2. The Covenant's 2 principles are that:</p> <ul style="list-style-type: none"> • the armed forces community should not face disadvantages when compared to other citizens in the provision of public and commercial services • special consideration is appropriate in some cases, especially for those who have given most such as the injured and the bereaved. <p>The Authority encourages all Tenderers, and their suppliers, to sign the Corporate Covenant, declaring their support for the Armed Forces community by displaying the values and behaviours set out therein.</p> <p>3. Guidance on the various ways you can demonstrate your support through the Corporate Covenant is at The Corporate Covenant .</p> <p>4. If you wish to register your support you can provide a point of contact for your company on this issue to the Armed Forces Covenant Team at the address below, so that the MOD can alert you to any events or</p>

initiatives in which you may wish to participate. The Covenant Team can also provide any information you require in addition to that included on the website.

Email address: covenant-mailbox@mod.uk
 Address: Armed Forces Covenant Team
 Zone D, 6th Floor, Ministry of Defence,
 Main Building, Whitehall, London, SW1A 2HB

5. Paragraphs 1 – 4 above are not a condition of working with the Authority now or in the future, nor will this issue form any part of the tender evaluation, contract award procedure or any resulting contract. However, the Authority very much hopes you will want to provide your support.

	Question	Description	
2.8.2	ITT-3.1	(*) Please select one of the following options to confirm whether your organisation has signed the Armed Forces Covenant.	