

CONCESSION AGREEMENT

**FOR THE OPERATION AND MANAGEMENT OF THE COMMUNITY
WORK SCHEME ENTERPRISE FOUNDATION**

BETWEEN

MALTA INVESTMENT MANAGEMENT COMPANY LIMITED

AND

GENERAL WORKERS' UNION

4TH JANUARY 2016

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THIS CONCESSION AGREEMENT is entered into in Sliema, Malta this fourth (4th) day of January, 2016 between:

- (a) Malta Investment Management Company Limited, a limited liability company incorporated under the Laws of Malta with its registration number C9588 and with its registered office at Clock Tower, Level 1, Tigne Point, Sliema, Malta, as represented by Mr John S. Busuttil, holder of identity card number 588056M, duly authorised, hereinafter referred to as **"Contracting Authority"**;
- (b) General Workers Union ('GWU'), a trade union having distinct legal personality as regulated and established under the Laws of Malta in particular Chapter Four Hundred and Fifty-Two (452) of the Laws of Malta, as represented by Mr Victor Carachi, holder of identity card number 522459M, duly authorised, hereinafter referred to as the **"Concessionaire"**;

MIMCOL and the Concessionaire are hereinafter individually referred to as a **"Party"** and collectively referred to as the **"Parties"**.

Whereas:

The Privatisation Unit of the Government of Malta, on behalf of the Government of Malta (hereinafter referred to as **"GoM"**), issued the RFP for the Set-up, Operation and Management of the Community Work Scheme Enterprise Foundation, a foundation having the specific task of employing a number of workers registered on the books of the Employment and Training Corporation, hereinafter referred to as the **'ETC'**, with the final aim that these workers become eligible and better equipped to seek gainful employment;

GWU has, in response to the RFP, put forward a proposal to set up, operate and manage a Community Work Scheme Enterprise Foundation providing the Workers, and any Additional Resources as defined hereunder as the case may be, an employment opportunity;

MIMCOL has accepted the proposal put forward by the GWU.

Now therefore, the Parties have agreed as follows:

Article 1 – Definitions, Interpretation, and Priority of Documents

1.1. Definitions

- 1.1.1. The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

Additional Resource(s) means any individuals, not being the Community Scheme Workers or the Severely Disadvantaged Individuals who are proposed by the Contracting Authority for employment by the Concessionaire;

Agreement or Concession Agreement means this concession agreement between the Parties;

Applicable Law means any law applicable in the Republic of Malta (without further enactment) and shall include without limitation, statute, statutory instrument, European Union Law or the requirement of any law, any requirements of a regulatory authority which have jurisdiction with regard to any part of the Concession or whose systems may be affected by any part of the Concession;

Bank is a credit institution duly licensed in terms of the Banking Act (Chapter 371 of the Laws of Malta);

Best Industry Practice means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading player which falls within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the services or the relevant part of them, having regard to factors such as the nature and size of the parties, the service levels, the term, the pricing structure and any other relevant factors;

Board of Governors means the Board of Governors as established in the setting-up of the Foundation;

CET is Central European Time;

Chairperson means the chairperson of the Foundation and of the Board of Governors appointed to administer (operate and manage) the Community Work Scheme Enterprise Foundation;

Commencement Date means the date of execution of this Agreement;

Community Work Scheme means the scheme administered by the Employment and Training Corporation aimed at providing to its participants the opportunity to undertake community work under the direction of local councils, non-governmental organisation and government entities with a view to enabling them to obtain further skills and improving their employability;

Community Work Scheme Enterprise Foundation or Foundation refers to the organisation set-up for the purpose of taking over and employing those persons currently enrolled in the Community Work Scheme of the ETC and/or any other persons which the ETC may deem appropriate for this purpose as described in this Agreement;

Community Work Scheme Participants means those persons who, as at the date of signing of this Agreement, are enrolled in the Community Work Scheme of the Employment and Training Corporation;

Concession has the meaning attributed to it in Clause 2.1;

Concession Period has the meaning attributed to it in Clause 3.2.1;

Contracting Authority means the MIMCOL acting on behalf of GoM;

Day(s) or Calendar Day(s) means a period of twenty-four (24) hours running from midnight to midnight, except that, in regard to the filing of any judicial act, the last day for the filing of such act shall be deemed to lapse on the time of closure of the Registry of the competent court or tribunal, and in case of acts filed in arbitration proceedings, shall be deemed to lapse in accordance with the provisions of the Dispute Resolution clause of this Agreement;

Dispute means a difference or contestation of whatever nature between the Parties arising under, out of or in connection with this Agreement (including, without limitation, any question of interpretation) and the term "**Disputed**" shall be interpreted accordingly;

DPA means Data Protection Act (Chapter 440 of the Laws of Malta);

Effective Date means the date of satisfaction or waiver of the Conditions Precedent in accordance with this Agreement;

Employment and Training Corporation or ETC means the body corporate established under the Employment and Training Services Act (Cap 343 of the Laws of Malta);

Foundation Manager means the manager appointed by the Foundation to be responsible for the day to day running of the Foundation;

Insurance/s means the insurances issued in terms of this Agreement;

Licence/s means any permits, licences or regulatory authorisations as may be necessary or required under the Applicable Law in order to license, regulate or otherwise authorise the Services contemplated in this Concession or for any other purpose related or ancillary thereto;

Malta is the island of Malta forming part of the archipelago of islands comprising the Republic of Malta;

Operational Service Fee/s is the consideration payable by the Contracting Authority to the Concessionaire as detailed in Schedule 2 (Foundation Operational Service Fee/s), hereof and is inclusive of all activities necessary for the implementation of this Agreement;

Personal Data shall have the meaning assigned to it in DPA and which is supplied by one Party to the other or obtained by a Party or any other Person pursuant to the terms of or in the course of performing this Agreement;

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Performance Security is the irrevocable and unconditional bank guarantee that shall be taken out by the Concessionaire in favour of the Contracting Authority by not later than the Effective Date, in the format detailed in Schedule 1 and as further provided in this Agreement.

Proposal is the proposal made by the Successful Proponent pursuant to the RFP;

RFP means the Request for Proposals issued by the Privatisation Unit on the 14th July 2015;

RFP Process is the competitive process, and all preparatory and other activities related thereto, and for this purpose but without limitation, the entry into the Concession Agreement, and/or other ancillary agreements, relating to the Setup, Operation and Management of the Community Work Scheme Enterprise Foundation to the Concessionaire;

Schedule means any and all of the Schedules attached to this Agreement;

Sensitive Personal Data shall have the meaning assigned to it in DPA and which is supplied by one Party to the other or obtained by a Party or any other person pursuant to the terms of, or in the course of performing the obligations set out in this Agreement;

Services means

- (i) The set-up, operation and management of the Community Work Scheme Enterprise Foundation;
- (ii) The taking over and employment of the Workers for the purpose of providing the Workers with the necessary training and support to increase their likelihood of employment;
- (iii) Liaison with the ETC to identify the individual needs of the Workers;
- (iv) The offering of the Workers' labour services in accordance with the RFP.

Severely Disadvantaged Persons refers to either:

- a. Any person who has been unemployed / inactive for the previous twelve (12) months during which he/she has not benefitted from a traineeship with the ETC and is either
 - i. Any person who is living as a single adult who has one or more dependants and is not in full-time employment; or
 - ii. Any person of age twenty-four (24) and over and who has not attained an upper secondary educational or vocational qualifications (ISCED 3), who does not have a job; or
 - iii. Any person older than fifty (50) years who does not have a job.

or



- b. Any person of age 24 (twenty-four) and over and who has been unemployed / inactive for the previous 24 (twenty-four) months during which he/she has not benefitted from a traineeship with the ETC.

Social Purpose Entities means those entities that serve a social purpose as shall be indicated by the Contracting Authority from time to time and shall include, but not be limited to, schools, non-governmental organisations and local councils;

SPD collectively refers to Personal Data and Sensitive Personal Data;

Termination means the termination of this Agreement in accordance with its terms;

Termination Notice means a written notice to terminate this Agreement given by either Party in terms of this Agreement;

Workers means the Community Work Scheme Participants and the Severely Disadvantaged Person;

Yearly Gross Salary means the minimum statutory wage payable to the Workers as established by the Applicable Law.

1.2. Interpretation


1.2.1. In this Agreement, unless the context otherwise requires and subject to provisions which expressly provide otherwise or qualify this understanding:

1.2.1.1 references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;


1.2.1.2 references to Laws of Malta, Maltese Law or the Applicable Law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of Malta and as from time to time may be amended, modified, supplemented, extended or re-enacted;

1.2.1.3 references to a "person" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;

1.2.1.4 the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

- 1.2.1.5 the words **"include"** and **"including"** are to be construed without limitation and shall be deemed to be followed by **"without limitation"** or **"but not limited to"** whether or not they are followed by such phrases;
- 1.2.1.6 references to **"construction"** include, unless the context otherwise requires, investigation, design, developing, monitoring, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and **"construct"** shall be construed accordingly;
- 1.2.1.7 any reference to any period of time shall mean a reference to such according to CET;
- 1.2.1.8 any reference to day shall mean a reference to a calendar day;
- 1.2.1.9 references to a **"business day"** shall be construed as a reference to a day (other than a Sunday) on which banks in Malta are generally open for business;
- 1.2.1.10 any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- 1.2.1.11 any reference to any period commencing **"from"** a specified day or date and **"till"** or **"until"** a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day. In the case of periods for the filing of judicial and/or arbitration acts, a day shall lapse at the closing time of the registry of the courts or arbitration institution as the case may be;
- 1.2.1.12 the words importing singular shall include plural and vice versa;
- 1.2.1.13 references to any gender shall include the other and the neutral gender;
- 1.2.1.14 references to the **"winding-up"**, **"dissolution"**, **"insolvency"**, or **"reorganisation"** of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- 1.2.1.15 any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to
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increase liabilities or obligations of the Regulatory Authority hereunder or pursuant hereto in any manner whatsoever;

- 1.2.1.16 any covenant on the part of the Concessionaire or the Contracting Authority herein contained not to do or omit from doing (as the case may be) any act or thing shall be deemed to include an obligation not to permit or knowingly suffer such act or thing to be done or omitted (as the case may be);
 - 1.2.1.17 any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Experts shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Experts, as the case may be, in this behalf and not otherwise;
 - 1.2.1.18 the Schedules and the Preamble to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - 1.2.1.19 references to the Preamble, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Preambles, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
 - 1.2.1.20 any reference to the words "include" or "including" or to any derivative thereof or to any cognate expression shall be construed in all cases and at all times to mean "including without limitation" or words of a like meaning and import;
 - 1.2.1.21 words and expressions not otherwise defined in this Agreement shall, when used in this Agreement, have the same meaning ascribed to them in this Agreement;
 - 1.2.1.22 the words "herein", "hereto", "hereby", "hereof", "herewith", "hereunder" and "hereafter" (to the exclusion of "hereinafter") shall refer to this Agreement as a whole and not to any single Article, paragraph or provision thereof; and
 - 1.2.1.23 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning.
- 1.2.2. Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Concessionaire to the Contracting Authority shall be provided free of cost and in three copies, and if the
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Contracting Authority is required to return any such documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.3. Priority of Documents

1.3.1. This Agreement and its Schedules are to be taken as mutually explanatory and, unless otherwise expressly provided, where there is ambiguity, inconsistency or conflict of obligations between Agreement and its Schedules, the following order of precedence will apply:

1.3.1.1. this Agreement;

1.3.1.2. the Schedules

1.3.2. Subject to what is established in this clause, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

1.3.2.1. between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

1.3.2.2. between the Clauses of this Agreement and the Schedules, the Clauses of this Agreement shall prevail;

Article 2 – Scope

2.1. The scope of this Agreement is the grant under an exclusive right by the Contracting Authority to the Concessionaire of a concession for the provision by the Concessionaire of the Services in terms of this Agreement and includes the grant of all the ancillary and supplementary rights which will enable the Concessionaire to deliver the Services.

2.2. The scope of the Concession shall include, during the Concession Period:

2.2.1. the provision of the Services in conformity with this Agreement and the Applicable Law;

2.2.2. the employment of the Workers, and the Additional Workers as the case may be, on a full-time, indefinite basis;

2.2.3. the running of any ancillary commercial activities; and

2.2.4. the performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement:

Article 3 – Grant of the Concession

3.1. Engagement of the Concessionaire, Acceptance and Duration of the Concession

- 3.1.1. Subject to the Concessionaire Warranties and in consideration of the performance by the Concessionaire of the obligations contained in this Agreement, the Contracting Authority hereby grants the Concession to the Concessionaire and engages the Concessionaire to provide the Services in terms of this Agreement, and the Concessionaire hereby accepts such grant and engagement upon the terms and conditions of this Agreement.

3.2. Concession Period

- 3.2.1. Unless terminated earlier in accordance with any provision of this Agreement or by mutual consent of the Parties in writing, this Agreement shall continue in full force and effect for a period of 5 (five) years from the Effective Date (the “Concession Period”).
- 3.2.2. Upon the lapse of the Concession Period or the earlier Termination, this Agreement shall terminate and expire *ipso jure* and without the need of any formality, procedure or further agreement.

3.3. Effective Date

- 3.3.1. All rights and obligations arising from this Agreement shall be operative as between the Parties as of the date when Closing is achieved in accordance with Article 5 (Closing) (the “Effective Date”).

Article 4 – Non-corporeal Assets

4.1 No Assignment of the Contracting Authority’s Credits and Liabilities

- 4.1.1 Any rights of credit in favour of the Contracting Authority in respect of the current activities and operations, if any, run in connection with the Workers prior and up to the Effective Date shall continue to pertain to the Contracting Authority and shall not be transferred to the Concessionaire.
- 4.1.2 The Contracting Authority’s liabilities in respect of the current activities and operations, if any, run in connection with the Workers prior and up to at the Effective Date shall continue to pertain to the Contracting Authority and shall not be transferred to the Concessionaire.

4.2 No Assignment of the Contracting Authority’s Litigious Rights and Rights of Action

- 4.2.1 Any litigious rights and rights of action howsoever arising and pertaining to the Contracting Authority in respect of the Workers prior and up to the Effective



Date shall continue to pertain to and be exercisable by the Contracting Authority as the case maybe. All and any litigious rights and rights of action in respect of the Concession howsoever arising after the Effective Date shall pertain to and be exercisable by the Concessionaire and the Contracting Authority shall have no responsibility or liability therefor.

Article 5 - Closing

- 5.1 This Agreement shall be binding on the Parties from the Commencement Date and all rights and obligations arising from this Agreement shall only be operative as between the Parties as of the Effective Date when the following conditions are satisfied:
- 5.1.1 The provision by the Concessionaire of the Performance Security in substantially the form set out in this Agreement;
 - 5.1.2 delivery by the Concessionaire of a certified true copy of the deed and statute of the Foundation;
 - 5.1.3 delivery by the Concessionaire of an extract of a fully executed resolution in writing passed by the Board of Governors in the form substantially agreed to by the Parties and acknowledging the transfer of rights and obligations onto the Foundation; and
 - 5.1.4 the Concessionaire providing the Contracting Authority evidence that the Insurances are in place by providing a copy thereof;
- 5.2 The Concessionaire shall ensure (so far as it lies within their respective powers so to do) that the conditions undertaken are satisfied as soon as practicable, and in any event, no later than 30 (thirty) Days from the Commencement Date.
- 5.3 The Parties shall co-operate fully in all actions necessary to procure the satisfaction of the conditions including (but not limited to) the provision by the Parties of all information reasonably necessary, keeping the other Party informed of progress and providing such other assistance as may reasonably be required in accordance with this Agreement.

Article 6 – The Foundation

- 6.1 The Concessionaire shall establish and register the Foundation in Malta in line with EU and national laws and regulations. The Concessionaire will be required to principally gear the working capital structure of the Foundation with its own funds, in addition to the Operational Service Fee.
- 6.2 The Foundation shall at all times remain:
- 6.2.1 an autonomous body corporate of a non-commercial nature having a distinct legal personality and having the capability of entering into contracts, of

acquiring, holding and disposing of property, movable and immovable, by any title, of suing or of being sued, of having and using its proper seal, and of doing all such things and entering into such obligations and transactions as are incidental and/or conducive to its proper functions.

6.2.2 a non-profit-making organisation:

Provided that the Foundation shall be authorised and entitled to carry out activities and undertakings on a commercial basis for the purpose of funding the provision of the Services. The assets as well as the liabilities of the Foundation shall be distinct from those of its founders, its managers, the members of the Board of Governors and its beneficiaries.

6.2.3 governed by a Board of Governors which shall determine its general policy and shall be responsible for its activities, organisations, financial administration, implementation of approved business plans, approval of its budget and administration of the property, movable and immovable, bestowed upon or otherwise acquired by the Foundation.

6.3 In the exercise of duties, the Board of Governors of the Foundation shall be bound by the fiduciary obligations set forth in Article 1124A of the Civil Code, Chapter 16 of the Laws of Malta:


Provided that without prejudice to the generality of the foregoing, the functions of the Board of Governors shall generally be:

- a. To attain to the best of its abilities the objects of the Foundation;
- b. To establish the policies and devise business plans and strategies that are conducive to the attainment of the Foundation's objects;
- c. To effectively manage the finances of the Foundation;
- d. To draw up regular financial statements;
- e. To draw up and publish regular progress reports at least once a year;
- f. To take all reasonable steps towards ensuring that all funds contributed and/or raised are prudently utilized for the realisation of the Foundation's objects or for any of its projects; and
- g. To do all such other things and carry on such other activities not inconsistent with any clauses of this Agreement as may be necessary to achieve the Foundation's objects or to fulfil the functions of the Board of Governors.

6.4 The Board of Governors may collaborate or act in conjunction with any individual, organisation or body or association of persons to achieve the aims and objects of the Foundation.

6.5 The Board of Governors shall regulate its own procedure and may, *inter alia*, appoint any committees or sub-committees it may deem necessary for the attainment of its purposes.


6.6 Members of the Board of Governors shall be chosen on the basis of their competence and integrity.

- 6.7 The Board of Governors shall consist of not less than 3 (three) and not more than 7 (seven) members appointed by the Foundation Manager, who shall also nominate, out of the members of the Board of Governors, the Chairperson for a term of 2 (two) years. The Foundation Manager may also add or remove other member/s on the Board of Governors as necessary.
- 6.8 The legal and judicial representation of the Foundation shall vest in the Chairperson of the Board of Governors or in such other member/s, in his/her stead, as may be duly appointed by the Board of Governors for such purpose/s as may be specified.
- 6.9 The Chairperson shall remain in office for a two (2) year period, which may be renewed for a further period/s, subject to the approval of the Board of Governors.
- 6.10 Members other than the Chairperson shall remain in office for a period of one (1) year unless he/she is removed from office by the founders appointing such member/s to the Board of Governors.
- 6.11 Unless they have resigned or been removed from office, members of the Board of Governors shall be eligible for re-appointment.
- 6.12 A founder shall be entitled to nominate an alternate governor to substitute the governor appointed by it at any meeting of the Board of Governors. In the absence of a governor, an alternate governor shall assume all the powers of the governor whom he or she is expressly empowered to substitute at a validly convened meeting of the Board of Governors. If the founder appoints its alternate, it shall do so by letter addressed to the Chairman of the Board of Governors.
- 6.13 In the event of any casual vacancy during the term of office of a governor, such vacancy shall be filled only by the founder which shall have appointed such former governor who has not continued in the office of governor thereby bringing about the casual vacancy.
- 6.14 The members of the Board of Governors shall be entitled to the remuneration, honoraria and/or benefits as established by the Board of Governors.
- 6.15 The quorum for a meeting of the Board of Governors shall be more than 50% (fifty per cent) of the then existing number of Governors present in person, through their alternate or by proxy. Where a quorum has not been reached, the business that was meant to be considered may be considered at another meeting that shall be held within 7 (seven) days from the first scheduled meeting.
- 6.16 Unless otherwise required by this Agreement, decisions shall be taken by a simple majority of the governors present at a meeting of the Board of Governors. Every governor shall be entitled to one (1) vote and in case of a
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parity of votes, the Chairperson shall have a casting vote.

- 6.17 A resolution in writing signed by all the governors for the time being holding office as members of the Board of Governors shall be as valid and effective as if it had been passed at a meeting of the Board of Governors duly convened and held. Such a resolution shall be deemed duly passed even if the various governors express their adherence to the resolution in different documents and even if such adherence or adherences shall be expressed through facsimile or electronic transmission provided that the text of the resolution is identical in each separate document.
- 6.18 The accounts of the Foundation shall be made up to the end of December of each year and shall be audited and certified by certified public accountants and auditors nominated for this purpose by the Board of Governors.
- 6.19 The Foundation shall be responsible to draw up a quarterly report of its activities and to forward same, together with information regarding the prospects of or actual employment of its employees, to MIMCOL.
- 6.20 If, for any reason, the Foundation ceases to exist, all its remaining net assets shall devolve in terms of the Second Schedule of the Civil Code, Chapter 16 of the Laws of Malta, saving any reservations made by benefactors and donors in respect of any property donated by them.
- 6.21 The founders, beneficiaries or any of the members of the Board of Governors shall not be personally liable for any debts or liabilities incurred or obligations assumed by the Foundation.
- 6.22 The Concessionaire shall, within 5 (five) days from the date when the Foundation has been duly registered in terms of the Second Schedule of the Civil Code (Cap 16 of the Laws of Malta), notify in writing by recorded post (the Notification) the Contracting Authority that the Foundation has been so registered and as from the date of the Notification:
- (i) the Foundation shall be deemed to be the Concessionaire for the purposes of this Agreement and shall assume all the rights and obligations of the Concessionaire in terms of this Agreement; and
 - (ii) the General Workers Union shall immediately be released from performing any further obligations of the Concessionaire in terms of this Agreement.

Article 7 – The Workers

- 7.1 The Contracting Authority shall make available for employment by the Foundation at any given time during the Concession Period the Workers and the Additional Resources, as the case may be, on the first (1st) day of February of the year two thousand sixteen (2016):
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Provided that the Foundation may, within four (4) months from the date of the transfer of the Workers, transfer back to the Contracting Authority any Worker/s which the Foundation deems that it is not in a position to keep in employment, for any reason which it shall declare in writing to the Contracting Authority.

- 7.2 The Foundation shall take full responsibility for the Workers and the Additional Resources made available for employment by the Contracting Authority to the Concessionaire.
- 7.3 The Foundation shall register and employ the Workers and any Additional Resources on a full-time, indefinite basis and shall bind itself to pay the Workers the Yearly Gross Salary apart from all Government statutory bonuses to which the Resources are or may be entitled to according to Law.
- 7.4 The Foundation undertakes to seek out and enter into contracts for services with Social Purpose Entities in terms of which the services of the Workers shall be offered to the Social Purpose Entities in line with the RFP, provided that such terms and conditions are in accordance with the Licenses and the Applicable Laws, due regard and consideration being had to the ability and skills of each Worker and/or Additional Resource.
- 7.5 The Contracting Authority acknowledges that once the abilities and skills and competencies of a Worker or Additional Resource, as the case may be, have been matched with an opportunity, the Worker or Additional Resource, as the case may be, shall be bound to accept the deployment to the post offered by the Social Purpose Entity unless refusal is based on a valid reason at law.
- 7.6 The Foundation shall conduct an employability audit of each Worker and Additional Resource, as the case may be, to determine the skills, abilities and competencies of each and, once identified, shall proceed to provide for the necessary training of each Worker and Additional Resource, as the case may be, which training shall include but not be limited to retraining in alternative areas of employment which match and fall within the abilities, skills and competencies of each Worker or Additional Resource, as the case may be.
- 7.7 The Foundation shall be obliged to enter into individual contracts of employment with each Worker and Additional Resource, as the case may be, which contracts shall be in full conformity with the Applicable Laws and as from the date of execution of the employment contract in respect of each Worker and Additional Resource, as the case may be, shall be deemed to be employed by the Foundation.
- 7.8 The Foundation shall:
- 7.8.1 perform all obligations and duties it is required to perform in respect of the Workers or Additional Resources, as the case may be, arising under contract, statute, or under any laws of the European Union;
- 7.8.2 not apply terms of payment or employment conditions to any Worker or Additional Resource, as the case may be, that are more favourable than those applied to a Worker or Additional Resource, as the case may be, in the same
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category or in the same work or in work of equal value with the same employer which would constitute discrimination under the Applicable Law;

- 7.8.3 ensure that the pay structure and salaries of the Workers or Additional Resources, as the case may be, are aligned where Workers or Additional Resources, as the case may be, are performing the same work and/or work of equal value with the same employer;
- 7.8.4 ensure that the Workers or Additional Resources, as the case may be, are at all times properly trained for their respective functions in line with minimum requirements at Applicable Law and in order for the Foundation to perform its obligations under this Agreement; and
- 7.8.5 maintain harmony and good industrial relations among the Workers or Additional Resources, as the case may be, trade unions, and workers' representatives.


Article 8 – Obligations of the Concessionaire

- 8.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its cost and expense operate and manage the Community Work Scheme Enterprise Foundation, perform the Services and observe, fulfil, comply with and perform all its obligations set out in this Agreement.
- 8.2 The Concessionaire shall discharge its obligations under this Agreement:
 - 8.2.1 in compliance with the Applicable Law, the Licence, and the Other Licences (including renewals as required);
 - 8.2.2 in accordance with the Schedules; and
 - 8.2.3 with the due care and diligence of a *bonus pater familias*.
- 8.3 In addition to all its other obligations contained in this Agreement, at its own cost and expense and as applicable at all times throughout the Concession Period, the Concessionaire shall:
 - 8.3.1 Procure that the Foundation enters into an employment contract with each Worker or Additional Resource as the case may be;
 - 8.3.2 Obtain all Licences in conformity with the Applicable Law and comply with such Licences, and with the Applicable Law;
 - 8.3.3 Procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used in or incorporated into the management and operation of the Foundation;

- 8.3.4 Observe and fulfil all requirements under any Applicable Law in respect of the Concession and indemnify and hold the Contracting Authority harmless against any and all claims, penalties and/or damages in respect of breaches of any law or regulation arising out of the operations of the Concessionaire;
- 8.3.5 Maximise the potential of the Workers and the Additional Resources, as the case may be, by taking decisions which are in conformity with the Best Industry Practice;
- 8.3.6 Seek out and enter into contracts for services with Social Purpose Entites in terms of which the services of the Workers and the Additional Resources, as the case may be, shall be offered on such terms and conditions as the Foundation shall deem fit provided that such terms and conditions are in accordance with the Applicable Law and this Agreement;
- 8.3.7 Observe and comply with the Applicable Law, including the Licences, all the provisions of this Agreement, all internationally-recognised industry standards, practices, codes and guidelines as are ordinarily and internationally recognised in the industry, all international conventions, treaties and agreements applicable to the operation of the Concession, including those pertaining to employment law and the protection of human health and safety;
- 8.3.8 Conduct an employability audit of the Workers and the Additional Resources, as the case may be;
- 8.3.9 Provide for the necessary training of each Worker or Additional Resource, as the case may be;
- Submit to inspections carried out by the ETC, the Occupational Health and Safety Authority and any other regulatory body duly empowered to carry out such inspections according to the Applicable Law; and
- 8.3.10 Generally carry out its duties as Concessionaire hereunder and perform its obligations under this Agreement with the due care and diligence of a *bonus pater familias*.

Provided that the GWU shall be deemed to have fulfilled its obligations by the setting up of the Foundation and the rights and obligations of the Concessionaire in terms of this Agreement shall henceforth be transferred to the Foundation ("the Transfer") and the Foundation shall thereafter be deemed to be the Concessionaire in terms of this Agreement.

Provided further that the GWU shall, on the Transfer, cease to be deemed the Concessionaire and hereby undertakes to guarantee, jointly and severally with the Concessionaire, from the moment of the Transfer, the obligations of the Concessionaire in terms of this Agreement.



Article 9 – Obligations of the Contracting Authority

9.1 The Contracting Authority shall:

- 9.1.1 Identify the Workers and Additional Resources, as the case may be, to be employed by the Concessionaire;**
- 9.1.2 Grant the necessary assistance to the Concessionaire for the purposes of the execution of this Agreement;**
- 9.1.3 Effect payments to the Concessionaire as established under this Agreement; and**
- 9.1.4 generally observe and comply with all its obligations under this Agreement.**

Article 10 – Concessionaire Warranties

10.1. The Concessionaire represents and warrants to the Contracting Authority that:

- 10.1.1. The Foundation will be and remain a foundation duly established under the laws of Malta in particular the second schedule of the Civil Code, Chapter Sixteen (16) of the laws of Malta, duly registered with the Registrar for legal persons, vested with separate legal personality and that it has power to carry on its business and to own its property and assets;**
- 10.1.2. it has and will retain power and authority to sign, execute and deliver this Agreement to perform all its obligations under this Agreement;**
- 10.1.3. all necessary action has been taken, and not revoked, to authorise the signing, execution, delivery and performance of this Agreement;**
- 10.1.4. the execution, delivery and performance by the Concessionaire of this Agreement does not and will not:**
 - a. Contravene the provisions of the Applicable Law or any other legislation to which the Concessionaire is subject;**
 - b. Result in any actual or potential breach of or default under any obligation, agreement, instrument or consent to which it is a party or by which it is bound or which it requires to carry on its business;**
 - c. Breach any provision of its deed or statute of foundation;**
- 10.1.5. No litigation, arbitration or administrative proceeding, and without limitation, no dispute with any statutory or governmental authority is pending or to its knowledge threatened against it or any of its assets at the date of this Agreement which have not been formally brought to**

the attention of the Contracting Authority prior to the date of this Agreement;

- 10.1.6. It is not and will not be in default in the filing, registration or recording of any document under any legal or statutory obligation or requirement which default might have a Material Adverse Effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement;
- 10.1.7. The information furnished in the Proposal and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- 10.1.8. Having undertaken the necessary checks, it is not aware of any error, default or other factor, whether attributable to the Concessionaire, its governors or any agents appointed by it, there is nothing that impinges on the validity of its registration as a foundation concessionaire;
- 10.1.9. The objects of the Foundation to be set up in terms of its deed and statute of foundation are and will remain limited to the powers, faculties, capacities, competences and ancillary authorities enabling the Concessionaire to carry out the management and operation of the Foundation for the provision of the Services and any real or personal rights, under whatever title, for the performance or the better performance of this Agreement and in terms of the Licences;
- 10.1.10. No proceedings or other steps have been taken and not discharged, nor threatened for the dissolution of the Concessionaire;
- 10.1.11. The records, financial statements and reports of the Foundation shall be prepared on an annual basis consistently applied, using accounting principles which are generally accepted, audited by an external auditor and shall give a fair and true view of the consolidated financial conditions of the Foundation;
- 10.1.12. As of the date of this Agreement, the copies of the documents required by the Contracting Authority from the Concessionaire which the Concessionaire has delivered, are true and complete copies, and where applicable translations in English, of such documents and there are not in existence any other agreements or documents replacing or relating to any of the said documents which affect the interpretation or the application of such documents in any manner;
- 10.1.13. It has full power and authority to receive, store and process the SPD, to use it for the purposes set out in this Agreement and to give the warranties, indemnities and enter into and perform its obligations under and in terms of this Agreement;
- 10.1.14. It has in place, appropriate technical and organisational measures to prevent unlawful or unauthorised processing, accidental or unlawful

destruction, accidental loss, alteration, unauthorised disclosure or access and adequate security procedures to ensure that unauthorised persons will not have access to the SPD, or to equipment used to process the SPD and that any persons it authorises to have access to the SPD will respect and maintain the confidentiality and security thereof; and

- 10.1.15. It has no reason to believe that any legislation applicable to it in any way prevents, restricts or limits its ability or right to comply with and fulfill its obligations under this Agreement.


Contracting Authority Disclaimer

- 10.2 The Contracting Authority has made information relating to the Concession and the obligations to be assumed by the Concessionaire under this Agreement available to the Concessionaire prior to the date of this Agreement.
- 10.3 Except for gross negligence or wilful misconduct, neither the Contracting Authority nor any of its staff or advisers shall be liable to the Concessionaire, whether in contract, tort or otherwise and whether or not liability arises out of negligence (not being gross negligence) on the part of the Contracting Authority or any of its staff or advisers, in respect of any inaccuracy, mis-statement, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Information mentioned in sub-Article 10.1.

Article 11 – Performance Security

- 11.1. Within fifteen (15) days from the Effective Date, the Concessionaire shall in security for the due, proper and punctual performance of all its payments, performance and other obligations under this Agreement, including any arbitration award delivered against the Concessionaire in favour of the Contracting Authority in proceedings brought in terms of the Dispute Resolution clause of this Agreement, procure and deliver to the Contracting Authority at the Concessionaire's sole cost and expense an unconditional and irrevocable on demand bank guarantee issued by a Bank duly licensed to carry out banking activities in Malta in the form set out in **Schedule 1 (Performance Security)** for the sum of €100,000 (one hundred thousand euro).
- 11.2. Where in the reasonable opinion of the Contracting Authority the Bank issuing the guarantee is no longer acceptable to it, it may direct the Concessionaire to procure and deliver to the Contracting Authority within 1 (one) month from the date of such request a new Performance Security under the same terms and conditions provided for in this clause.
- 11.3. The Performance Security shall be valid and effective as from the Effective Date) throughout the Concession Period and for a period of 12 (twelve months) following the expiry of the Concession Period for whatsoever reason, and the Concessionaire shall procure:

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- 11.3.1 the renewal and extension thereof annually as many times as is necessary in order to cover a period of time unto Termination and not less than 1 (one) Year thereafter and this at its sole cost and expense; and
- 11.3.2 the notification of such renewal, extension, and, if applicable, the revised amount covered by the bank guarantee, within 10 (ten) Days prior to the expiration of the guarantee.
- 11.4 The Contracting Authority may call upon the Performance Guarantee or the New Performance Guarantee in the event that the Concessionaire fails to duly and punctually perform its obligations arising under this Agreement.
- 11.5 In the event that the Contracting Authority is entitled to call upon the Performance Security:
- 11.5.1 the Contracting Authority may call upon the bank guarantee up to the amount of any financial indebtedness of the Concessionaire to the Contracting Authority as soon as such financial indebtedness arises; and
- 11.5.2 in the event that the sum of the bank guarantee covers the Concessionaire's financial indebtedness towards the Contracting Authority, the Concessionaire shall forthwith cause the bank guarantee to be raised to its original amount; and
- 11.5.3 in the event that the sum of the bank guarantee does not cover the Concessionaire's indebtedness towards the Contracting Authority, the Concessionaire shall pay the Contracting Authority any amount of such indebtedness in excess of the sum covered by the bank guarantee within 2 (two) months from the day when the bank guarantee does not so cover the Concessionaire's indebtedness; and
- 11.5.4 without prejudice to the foregoing, in the event that the sum covered by the bank guarantee is not sufficient to cover the amount of the Concessionaire's financial indebtedness towards the Contracting Authority, the Concessionaire shall, following the Contracting Authority's call, forthwith raise a new bank guarantee for such amount as is equivalent to such financial indebtedness.
- 11.6 In the event that the Contracting Authority shall make a withdrawal of any amount under the Performance Security, the Contracting Authority shall forthwith notify the Concessionaire in writing and the Concessionaire shall immediately replenish the Performance Security to the original amount of one hundred thousand euro (€100,000).
- 11.7 Without prejudice to the other provisions of this Agreement, in the event that any balance is left from the Performance Security at the termination for whatever reason of this Agreement, the Contracting Authority shall appropriate any outstanding undisputed amounts due to it from the Performance Security and return the balance, if any, to the Concessionaire forthwith by not later than 30 (thirty) days from the date of termination.
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Article 12 - Licences


12.1 Procurement of Licences

- 12.1.1 The Concessionaire shall, at its own cost and expense, obtain and maintain any and all necessary Licences in conformity with the Applicable Law and comply with such Licences, for the duration of the Concession Period and undertakes not to commence with the provision of the Services before having all such necessary Licences as may be required in terms of the Applicable Law in place.

12.2 Undertakings of the Concessionaire in respect of Licences

- 12.2.1 The Concessionaire undertakes and obliges itself, subject to the provisions of this Agreement:
- 12.2.2 not to carry on any regulated activities or operations without being in possession of the necessary Licences;
- 12.2.3 to keep in force and maintain the Licences throughout the Concession Period;
- 12.2.4 to manage, operate, develop and maintain the activities and operations of the Concession and in general to provide the Concession Services in accordance with the provisions of the Licences (as appropriate) and not to violate or in any other way breach any of the terms and conditions of the Licences; and
- 12.2.5 to comply with the conditions of the Licences as may from time to time be amended, altered or in any other way varied respectively by the competent authority.
- 12.2.6 The Concessionaire undertakes and obliges itself to furnish an appropriately authenticated copy of the Licences to the Contracting Authority by not later than 3 (three) days from the date of the grant of the Licences.

12.3 Approval and Integration of Licences and Amended Licences

- 12.3.1 In the event that the Concessionaire applies or makes any representation to the competent authority for the obtainment of new licenses or the alteration, amendment or variation in the Licenses, the Concessionaire shall seek the written consent of the Contracting Authority prior to making any such application or representation.
- 12.3.2 The Contracting Authority shall, following the request for consent, provide a reply within 15 (fifteen) Days from the receipt of the Concessionaire's request. In the event that the Contracting Authority fails to provide a reply within the stipulated time-frame the Parties agree to construe said failure to reply as a deemed consent of any such application or representation:
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Provided that the Concessionaire's request shall be sufficiently detailed to enable the Contracting Authority to arrive at a reasoned and informed decision on the nature of the requested new license, alteration, amendment or variation to existing Licenses.

Provided further that where the Contracting Authority is satisfied that the request is in line with the Concession and the Services to be provided thereunder it shall not unjustifiably withhold its consent.

12.4 Non-Approval of Amended Licence

12.4.1 In the event that the Contracting Authority, acting reasonably, does not approve a request for a new licence or a request for any alteration, amendment or variation to the Licences, the Concessionaire shall continue to operate in terms of the Licences and any operation or other activity conducted in terms of the request which has not been approved, shall for the purposes of this Agreement be tantamount to the conduct of unlicensed activities and shall constitute a Concessionaire Event of Default.

12.5 Amendment of Licences by Regulatory Authorities

12.5.1 The provisions of this clause requiring the grant of the Contracting Authority's consent in relation to a request for the obtainment of a new licence or the alteration, amendment or variation to the Licences shall not apply where the new licence, alteration, amendment or variation to the Licences is imposed solely by the competent licensing authority, as the case may be:

Provided that the Concessionaire shall still be bound to deliver to the Contracting Authority an appropriately authenticated copy of the new licence or amended Licences by not later than 3 (three) Days from the amendment, alteration or other variation.


12.6 Exclusions

12.6.1 Where a license, including any of the Licenses, is likely, expected or required to be issued or given in respect of the Services by or on behalf of an independent authority, the Contracting Authority does not guarantee, represent or warrant that the said license will be issued or given as aforesaid nor are any representations, warranties and guarantees being made as to the terms and conditions of any such permit or license:

Provided that the Contracting Authority shall endeavour to assist and facilitate in such a process as far as reasonably possibly.

Article 13 – Insurance and Indemnity

13.1 The Concessionaire shall take out, purchase and maintain at all times and at its own cost and expense the Insurances specified in clause 13.5 together with any such additional insurance as may be required by the Applicable Law and as the



Concessionaire may reasonably consider necessary or prudent in accordance with Best Industry Practice.

13.2 Policies

13.2.1 Within thirty (30) Days of receiving any insurance policy certificates or cover notes in respect of Insurance required to be obtained and maintained under this Clause, the Concessionaire shall furnish to the Contracting Authority copies of such certificates or cover notes, copies of the Insurance Policies and evidence that the Insurance premiums have been paid in respect of such Insurance. No Insurance may be cancelled, modified or allowed to expire or lapse until the expiration of at least thirty (30) Days' notice of such cancellation, modification or non-renewal has been provided by the Concessionaire to the Contracting Authority.

13.3 Remedy for Failure to Insure

13.3.1 If the Concessionaire fails to take out, purchase and keep in force all Insurances for which it is responsible hereto, the Contracting Authority shall have the option to issue and/or keep in force any such Insurances and pay such premiums and the Contracting Authority shall invoice the Concessionaire for any such disbursement and the Concessionaire shall be obliged to reimburse the Contracting Authority with any costs and expenses incurred in relation to same:

Provided that in the event whereby following notification of the aforementioned invoice to the Concessionaire the latter fails to pay the Contracting Authority within 30 (thirty) Days thereof, the Contracting Authority shall be entitled to call upon the Performance Security, as may be applicable, up to the amount of any Indebtedness of the Concessionaire to the Contracting Authority in terms of this Clause.

13.4 Reasonable Action

13.4.1 Neither of the Parties shall fail to take any reasonable action, or insofar as it is reasonably within its power, shall permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any policy of Insurance in which that Party is a joint insured or additional insured Person.

13.5 The Insurances


The Concessionaire shall procure

13.5.1 an All Risks Insurance Policy and a Public Liability Insurance Policy for the duration of the Concession Agreement.

13.5.2 an Employer's Liability Insurance Policy for the duration of the Concession Agreement.

13.6 Mandatory Insurance Provisions


13.7.1 The policies of Insurance shall:

- 13.7.1.1 name the Contracting Authority as joint-insured with the Concessionaire as a party who has an insurable interest in the said policies of Insurance;
 - 13.7.1.2 contain a provision waiving the insurer's subrogation rights against the Contracting Authority and except in the case of their respective gross negligence and/or wilful misconduct;
 - 13.7.1.3 be maintained with reputable insurers licensed to or authorised to write insurance business in the European Union or EEA States and who are acceptable to the Contracting Authority and such acceptance shall not be unreasonably withheld or delayed;
 - 13.7.1.4 insofar as they relate to the insured risks, contain a provision in the then standard format for 'Indemnity to Principals' or equivalent;
 - 13.7.1.5 contain a provision that each policy of Insurance which insures the rights and interests of more than one (1) Party operates, save for limits of liability and/or amount, in the same manner as if it were a separate policy with and covering each insured and be without right of contribution from any other insurance which is carried by an insured;
 - 13.7.1.6 provide for employers' liability with a limit to be mutually agreed by the Parties for claims arising from a single event or series of related events in a single calendar year;
 - 13.7.1.7 provide for public liability with a limit to be mutually agreed by the Parties; and
- 13.7.2 Save in the case of loss, damages or injury resulting from gross negligence or wilful misconduct of the Contracting Authority, the Resources and the Additional Resources, the Concessionaire shall not bring any claim or action against the Contracting Authority in respect of any loss or damage in circumstances where the Concessionaire would recover such loss or damage under the policies of Insurance mentioned in this clause (whether or not such Insurances have in fact been effected or if effected have been vitiated as a result of any act or omission of the Concessionaire, including but not limited to non-disclosure or under-insurance).
- 13.7.3 The Concessionaire shall, within seven (7) Days from a request to this effect by the Contracting Authority, give to the Contracting Authority:
- 13.7.3.1 copies of all policies of Insurance taken out pursuant to this Clause 24 and the Contracting Authority shall be entitled to inspect the original thereof; and
 - 13.7.3.2 evidence that the premiums payable in respect of all or any such policies of Insurance have been paid and that the said policies of Insurance are in full force and effect.
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- 13.7.4 Renewal certificates in relation to the Insurances referred to in this Clause 24 shall be obtained as and when necessary and copies (certified in a manner acceptable to the Contracting Authority) shall be forwarded to the Contracting Authority as soon as possible but in any event not later than twenty (20) Days after the policy renewal date.
- 13.7.5 The Concessionaire shall give the Contracting Authority notification within seven (7) Days of any being made on any of the Insurances taken out by the Concessionaire in terms of this clause accompanied by full details of the incident giving rise to the claim. The Concessionaire shall upon request of the Contracting Authority give the Contracting Authority an annual claims' report.
- 13.7.6 Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve the Concessionaire of its liabilities and obligations under this Agreement;
- 13.7.7 The supply to the Contracting Authority of any draft policy of Insurance or certificate of Insurance or cover note or other evidence of compliance with this clause shall not imply acceptance by the Contracting Authority that the extent of insurance cover is sufficient and compliant with this clause or that its terms are satisfactory.

Provided that failure to report any shortfall or discrepancy or uninsured cover within 14 (fourteen) days from submission date shall be deemed as acceptable to the Contracting Authority.

13.8 Disclosure

- 13.8.1 Each Party shall ensure that the following matters are disclosed to the insurers issuing any of the Insurances, provided that the Contracting Authority shall be obliged only to notify the Concessionaire and the Concessionaire shall be obliged to notify such insurers, and provided further that the Concessionaire shall be obliged to provide such information to the Contracting Authority insofar as it is relevant to any of the Insurances maintained by the Contracting Authority, or of which it has the benefit, and which Insurances are notified by the Contracting Authority to the Concessionaire:
- 13.8.1.1 all information which such Party, acting in accordance with Best Industry Practice and with the utmost good faith, reasonably considers to be material to the relevant Insurance and/or acting in accordance with the advice of its insurance advisers believes that the relevant insurers require, including details of any material change in the methods or procedures used in the performance of the Services; and
- 13.8.1.2 all information material to the relevant Insurances which such insurers specifically request to be disclosed.
- 13.8.2 On request by a Party, the other Party shall forthwith supply the Party making the request with copies of any information supplied to the insurers pursuant to the Disclosure provisions of this clause.
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13.8.3 Where a Party is aware of any information which it would not reasonably expect to be known by the other Party but, if the same were known to such other Party, the Party being in possession of the information would expect the other Party to disclose to the insurers, that Party shall, promptly upon becoming aware of the relevant information, provide details of the same to the other Party;

13.8.4 Each Party will notify the insurers of any material changes in its methods and procedures of working to the extent that it is reasonably likely to affect adversely the Insurances and procure that the insurers provide an acknowledgement of such notice and will upon request supply the other Party with a copy of the notice and that acknowledgement.

13.8.5 Where any survey is conducted by any insurer pursuant to the Insurances, the Concessionaire shall request the insurer to supply copies of the results of the same (including any relevant report) to the Contracting Authority.

Article 14. Indemnity

14.1 The Parties shall, except in the case of any claim resulting from negligence or wilful misconduct of the the other Party, indemnify each other against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses suffered or incurred by such Party arising out of or in connection with:

14.1.1 That Party's breach or negligent performance or non-performance of the Concession Agreement;

14.1.2 Any claim made against either of them by a third party arising out of or in connection with the provision of the Services provided in terms of this Agreement, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Concession Agreement by either of the Parties, its employees, agents or subcontractors;

14.1.3 If any third party makes a claim, or notifies an intention to make a claim, against either of the Parties which may reasonably be considered likely to give rise to a liability under this indemnity (a Claim), that party shall:

a. As soon as reasonably practicable, give written notice of the Claim to the other Party, specifying the nature of the Claim in reasonable detail;

b. Not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the other Party (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Party may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the other Party, but without obtaining the other Party's consent if that Party

reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;

- c. Give the other Party and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of that party, so as to enable the other Party and its professional advisers to examine them and to take copies (at the other Party's expense) for the purpose of assessing the Relevant Claim;
- d. Subject to the other Party providing security to the Party to the latter's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the other party may reasonably request to avoid, dispute, compromise or defend the Claim.

14.1.4 Nothing in this clause shall restrict or limit the parties' general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

Article 15 – Operational Service Fee

15.1 The Operational Service Fee shall be paid by the Contracting Authority to the Concessionaire in accordance with the provisions of Schedule 2, in addition to any taxes if applicable:

Provided that it is agreed between the Parties that any income generated as a result of contracts entered into between the Concessionaire and the Social Purpose Entities shall be paid directly to the Contracting Authority.

Article 16 – Intellectual Property Rights

16.1 Ownership of Intellectual Property

- 16.1.1 The Parties each agree that any Background Intellectual Property (whether registered or not) owned or licensed to them prior to Effective Date ("Background IPR") shall vest in each Party unless expressly stated otherwise, and that the entry into this Agreement does not in any way constitute a transfer, licence or assignment of any Background IPR from one Party to the other.
- 16.1.2 The Contracting Authority agrees that all Intellectual Property Rights, whether registerable or not, arising as a result of the Concession and the Concessionaire's performance of the Services from the Effective Date onward, other than for the matter covered by the proviso to this clause, shall remain at all times vested in the Concessionaire:

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Provided that the Concessionaire acknowledges and consents that the database relating to any and all information pertaining to the Workers shall at all times remain the property of the Contracting Authority and, during the Concession Period shall remain freely accessible by the Contracting Authority whereas at the termination for whatever reason of this Agreement shall be remitted to the Contracting Authority in a legible, clear and incorrupt format with no additional copies remaining available to any person but the Contracting Authority.

16.2 *Lease of Intellectual Property Rights*

- 16.2.1 Upon the lapse of the Concession Period or the earlier Termination of this Agreement for whatever reason, the Contracting Authority have the option to lease the Intellectual Property Rights vested in the Concessionaire at an equitable market price to be agreed by the Parties.

Article 17 - Software - Third Party Licences

- 17.1 The Concessionaire is authorised to obtain any licenses from third parties in order to fulfil its obligations under this Agreement ("Third Party Licences").
- 17.2 The Concessionaire undertakes to not breach the terms of any Third Party Licence.

Article 18 – Data Protection and Resources' Records

18.1 *General*

- 18.1.1 The Concessionaire shall comply with the requirements of the DPA (as if it were a data controller).
- 18.1.2 Notwithstanding the general obligation in sub-Article 0, in processing the Personal Data or Sensitive Personal Data, the Concessionaire is acting as a data processor for the Contracting Authority. In carrying out such processing, the Concessionaire shall:
- 18.1.2.1 ensure that it has in place appropriate technical and contractual measures to ensure the security of the SPD (and to guard against unauthorised or unlawful processing of the SPD and against accidental loss or destruction of, or damage to, the SPD; and
 - 18.1.2.2 provide the Contracting Authority with such information as the Contracting Authority may reasonably require to satisfy itself that the Concessionaire is complying with its obligations under the DPA;
 - 18.1.2.3 promptly notify the Contracting Authority of any breach of the security measures required to be put in place pursuant to this sub-Article and

18.1.2.4 ensure it does not knowingly or negligently do or omit to do anything which places the Contracting Authority in breach of the Contracting Authority's obligations under the DPA.

18.1.3 The provisions of this Article shall apply during the Concession Period and indefinitely after the lapse of the Concession Period or the earlier Termination.

18.1.4 The Concessionaire shall not acquire any right, title or interest in and to any of the SPD or other information provided or disclosed by the Contracting Authority pursuant to this Agreement.

18.2 Use of SPD

18.2.1 The Concessionaire binds itself to use the SPD solely for the purposes of Concession and the performance of the Services and will not make copies, or otherwise reproduce SPD processed on behalf of the Contracting Authority, unless this is necessary for the aforesaid purposes.

18.3 Consents

18.3.1 The Concessionaire shall ensure that all necessary consents and/or approvals are in place for the use of SPD and the Contracting Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.

18.4 Notices to the Contracting Authority

18.4.1 The Concessionaire undertakes to immediately inform the Contracting Authority with:

18.4.1.1 requests for SPD regulated by this Agreement, by individuals (right of access requests) and also from third parties, including requests from law enforcement authorities;

18.4.1.2 any accidental loss or unauthorised access to SPD regulated under this Agreement and any legal proceedings initiated on the basis of an alleged breach of the Act.

18.4.2 The Concessionaire shall also notify the Contracting Authority forthwith upon it becoming aware that it is or is likely to become unable to comply with either its obligations under this Agreement and/or the the Contracting Authority's requirements or instructions (whether specific or general) regarding the processing of SPD whereupon the Contracting Authority shall be entitled, at its sole discretion, to suspend the right of the Concessionaire to process SPD under or pursuant to the terms of this Agreement (to such extent and for howsoever long as the Contracting Authority may determine) until the Concessionaire is able to demonstrate to the reasonable satisfaction of the Contracting Authority that the Concessionaire is able and will continue to be able to so comply providing always that if the Concessionaire is unable to demonstrate to the

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reasonable satisfaction of the the Contracting Authority that the Concessionaire is able and will continue to be able to comply with the terms of the Agreement, this shall be deemed to be a an Event of Default under clause 23.1.

18.5 Transfers of Personal Data

18.5.1 In processing Personal Data on behalf of the Contracting Authority pursuant to its obligations under this Agreement, the Concessionaire shall not process Personal Data outside the EEA without the express prior written consent of the Contracting Authority and, where the Contracting Authority gives such consents to a transfer, the Concessionaire will:

18.5.1.1 take such steps as may be necessary to ensure that the Contracting Authority's obligations under the DPA are observed and will not effect any such transfer unless and until it has satisfied itself that an adequate level of protection is in place in respect of the Personal Data to be transferred;

18.5.1.2 comply with all reasonable instructions notified to it by the Contracting Authority in connection with such transfer; and

18.5.1.3 as soon as reasonably practicable (and in any event within 5 (five) Days) of a request from the Contracting Authority, provide a written explanation and full details of the steps that have been taken or implemented by or on behalf of the Concessionaire to comply with this sub-Article.


18.5.2 The Concessionaire acknowledges and agrees that where Personal Data incorporates Personal Sensitive Data and is to be transferred outside the EEA, it may be necessary to ensure that additional safeguards and security measures are adopted by the Concessionaire, such as strong encryption or keeping a written record of access to such sensitive personal data. Such measures will require to be agreed in writing with the Contracting Authority prior to transfer.

18.6 Provisions for the return or destruction of Personal Data

18.6.1 Upon Termination of this Agreement (howsoever arising):

18.6.1.1 the Concessionaire shall cease to access, use or process any of the SPD; and

18.6.1.2 the Concessionaire will return all SPD and all other information belonging to the Contracting Authority and which is provided or disclosed to the Concessionaire for the purposes of this Agreement and all copies of such SPD and information to the Contracting Authority forthwith or, at the Contracting Authority's written instruction, will destroy all such SPD and information, together with any and all copies of all such SPD and information and certify in writing to the Contracting Authority that it has done so, save to the extent that the Concessionaire is prevented by law from destroying all or part of all



such SPD and information, in which event the Concessionaire undertakes that all such SPD and information will be kept confidential and will not be disclosed to any third party or used or processed for any purpose.

Article 19 – Force Majeure

19.1 Definition of Force Majeure Event

19.1.1 In this Agreement, a "Force Majeure Event" means any event or circumstance or combination of events or circumstances:

19.1.1.1 beyond the reasonable control of the Party affected by such event, circumstance or combination of events or circumstances (the "Affected Party");

19.1.1.2 which was not foreseeable or, if foreseeable, could not have been prevented or avoided or overcome by the Affected Party by the exercise of due diligence and reasonable efforts, skill and care;

19.1.1.3 has a Material Adverse Affect on the performance by the Affected Party of its obligations under this Agreement; and

19.1.1.4 which is not the direct result of a breach by the Affected Party of its obligations under this Agreement.

19.2 Force Majeure Events include but are not limited to the following circumstances, provided that they meet the criteria set forth in sub-Article 19.1 above:

19.2.1.1 act of God, plague, epidemic, natural disaster such as but not limited to storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, lightning, drought;

19.2.1.2 fire, explosion, or chemical contamination;

19.2.1.3 war (whether declared or not), armed conflict (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, act of terrorism, sabotage or piracy; or

19.2.1.4 civil war, riot rebellion and revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience;

19.2.1.5 radioactive contamination or ionising radiation; or

19.2.1.6 general labour disturbance such as boycotts, strikes and lock-out, go-slow, occupation of factories and premises, excluding similar events

involving the Concessionaire, the Contracting Authority, the Resources or the Additional Resources or attributable to any act or omission of any of them.

19.3 Consequences of Force Majeure

19.3.1 The Parties shall, at all times following the occurrence of a Force Majeure Event, use all reasonable endeavours to prevent and mitigate the effects of any interruption of the Services and the Concessionaire shall, at all times during which a Force Majeure Event is subsisting, take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

19.3.2 If a Force Majeure Event has occurred, the Affected Party shall be entitled to relief from its obligations under this Agreement. The other Party shall not be entitled to bring a claim for a breach of obligations under this Agreement by the Affected Party or incur any liability to the Affected Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out its obligations on account of that Force Majeure Event.

19.3.3 To obtain relief under the foregoing sub-article, the Affected Party must:

19.3.3.1 as soon as practicable, and in any event within seven (7) Days after it became aware that the Force Majeure Event has caused or is likely to cause breach of an obligation under this Agreement, give to the other Party a notice of its claim for relief from its obligations, including (i) satisfactory evidence of the existence of the Force Majeure Event, (ii) full details of the nature of the Force Majeure Event, (iii) the date of occurrence and (iv) its likely duration;

19.3.3.2 within seven (7) Days of receipt of the notice referred to in sub-Article 31.1, give to the other Party full details of the relief claimed, as well as information on all actions being taken by the Affected Party to mitigate the consequences of the Force Majeure Event;

19.3.3.3 demonstrate to the other Party that:

- (a) the Affected Party, and its contractors, could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material cost;
- (b) the Force Majeure Event directly caused the need for the relief claimed;
- (c) the relief claimed could not reasonably be expected to be mitigated by the Affected Party, including recourse to alternate sources of services, equipment and materials and construction equipment, without incurring material cost; and
- (d) the Affected Party is using all reasonable endeavours to prevent and mitigate the consequences of the Force Majeure Event of its obligations.

- 19.3.4 If the Affected Party has complied with all the foregoing obligations under this clause, then it shall be excused from the performance of its obligations under this Agreement to the extent it is prevented, hindered or delayed in such performance by reason of the Force Majeure Event.
- 19.3.5 In the event that information required under the foregoing provisions of this clause is provided after the dates referred to in that paragraph, then the Affected Party shall not be entitled to any relief during the period for which the information is delayed.
- 19.3.6 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 this Agreement. Following such notification this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

Article 20 – Change in Law

- 20.1 A Change in Law occurs when, after the Effective Date, any of the following events takes place and which have a Material Adverse Effect:
- 20.1.1 the enactment of any new Applicable Law;
 - 20.1.2 the repeal, modification or re-enactment of any existing Applicable Law;
 - 20.1.3 a change in the interpretation or application of any Applicable Law; and/or
 - 20.1.4 the imposition by any Regulatory Authority of any material condition in connection with the issuance, renewal or modification, or the revocation or non-renewal (other than in accordance with the existing Applicable Law) of any License.
- 20.2 If a Change in Law occurs or is shortly to occur, then any Party may, within 30 (thirty) Days starting from the day it was aware (or should have been aware) of the Change in Law, notify the other Party to express an opinion on its likely effects, giving details of its opinion of:
- 20.2.1 any necessary change to the terms of this Agreement;
 - 20.2.2 whether relief from compliance with obligations is required;
 - 20.2.3 whether any deadline under this Agreement should be postponed;
 - 20.2.4 any (positive or negative) change of revenue that will result from the relevant Change in Law;
 - 20.2.5 any (positive or negative) estimated change in the costs of the Concession that directly result from the Change in Law; or
 - 20.2.6 any capital expenditure that is required or no longer required as a result of a Change in Law.
- 20.3 As soon as practicable and in any event within 30 (thirty) days after receipt of any notice from the affected Party, the Contracting Authority and the

Concessionaire shall discuss and agree the issues referred to in the immediately foregoing clause and any ways in which either Party can, if applicable, mitigate the effect of the Change in Law, including, in relation to the Concessionaire:

- 20.3.1 providing evidence that the Concessionaire has used reasonable endeavours (including, where practicable, the use of competitive quotes) to oblige its Sub-contractors to minimise any increase in costs and maximise any reduction in costs;
- 20.3.2 demonstrating how any capital expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Concessionaire;
- 20.3.3 giving evidence as to how the Change in Law has affected prices charged by any similar businesses to the Concession; and
- 20.3.4 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain the contractual obligations of the Concessionaire that have been affected by the Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under sub-Articles 20.2.5 and 20.2.6 above.

Provided that if the Parties cannot agree on the effects of the Change in Law, the matter shall be referred for determination in accordance with the Dispute Resolution clauses of this Agreement.

20.4 If the Parties have followed the procedure set out under this clause then:

- 20.4.1 the affected Party shall be excused from the performance of its obligations under the this Agreement to the extent it is prevented, hindered or delayed in such performance by reason of the Change in Law; and
- 20.4.2 the Parties shall agree on the amount and payment of any compensation to take into account the actual costs or gains reasonably incurred or obtained further to the Change in Law, provided that no compensation shall be made in relation to a Change in Law under this clause unless the claiming Party can demonstrate that the aggregate impact of all Change in Laws that have occurred during the year during which the Change in Law in respect of which compensation is claimed occurs exceed €50,000 (fifty thousand euro).

20.5 In the event that the notice and relevant information are not provided within the period referred to under sub-Article 20.2 above, the affected Party shall not be entitled to any compensation or relief from its obligations under this Agreement in respect of the period for which the information is delayed.

Article 21 – Grounds for Dissolution

21.1 The Concession Agreement may be dissolved by the Contracting Authority

in any of the following events:

- a. Failure by the Concessionaire to satisfy all the obligations set out under this Agreement and in accordance with the terms of this Agreement;
- b. Failure by the Concessionaire to pay or late payment of wages due to workers;
- c. The transfer and/or assignment of the Concessionaire's obligations undertaken under this Agreement irrespective of form or manner, whether in whole or part thereof, without first obtaining the Contracting Authority's consent in writing;
- d. Cessation of the operations of the Foundation undertaken by the Concessionaire under this Agreement for a period exceeding two (2) months. Provided that the Contracting Authority shall be entitled to suspend payment of the Service Fee for such period that the operations of the Foundation are not in operation;
- e. Any other action of the Concessionaire that constitutes a material breach of the terms and conditions of this Agreement.

Failure of any of the above and hence the dissolution of the Concession Agreement does not mitigate the Contracting Authority's right to take legal action for damages arising from the failure to provide the agreed services under the Concession Agreement.

Article 22 – Closure of Concession

- 22.1 During last 12 (twelve) months of the Concession Period, the Concessionaire shall cooperate fully with the Contracting Authority with the objective of securing a smooth transfer of responsibility unto the Contracting Authority or the Concessionaire's successors as the case may be. For this purpose, the Concessionaire undertakes to:

- 22.1.1 Provide to the Contracting Authority all and any information concerning the Concession Agreement as may be required for the launch of a competitive process and efficient transfer of responsibility unto a new concessionaire;
- 22.1.2 Provide all stored data related to the Services in electronic digital standard media so as to permit this stored data to be stored in an alternative system that will permit its utilisation;
- 22.1.3 Assist the Contracting Authority in the transfer of any stored data related to the Services to any other system deemed appropriate by the Contracting Authority;
- 22.1.4 Liaise with the Contracting Authority and/or prospective concessionaires, and provide reasonable assistance and advice concerning the Services;
- 22.1.5 Perform all necessary acts to ensure a smooth transition to any new concessionaire with effect from the date of termination of the Concession Agreement.

Article 23 - Termination of Concession Agreement

- 23.1 Without prejudice to any rights that accrue under the Concession Agreement or any of its rights or remedies, either Party may at any time Terminate the Concession Agreement with immediate effect by giving to the other party a Termination Notice in any of the following circumstances which shall constitute an Event of Default:
- 23.1.1 The other Party fails to pay any amount due under the Concession Agreement on the due date for payment and remains in default for not less than 14 (fourteen) days after being notified in writing to effect such payment; or
 - 23.1.2 The other Party commits a material breach of any material term of the Concession Agreement and if such breach is capable of remedy, fails to remedy that breach within a period of 14 (fourteen) days after being notified in writing to do so; or
 - 23.1.3 The other Party repeatedly breaches any of the terms of the Concession Agreement, including a breach of a non-material term of the Concession Agreement, over a rolling period of 6 (six) months, in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Concession Agreement:
Provided that written notice of each such alleged breach must be given to the Party committing the breach upon each occurrence of the breach;
or
 - 23.1.4 The number of Workers transferred to the Concessionaire by virtue of Clause 6 of this Agreement is too low for the Concessionaire to be able to fulfil its obligations undertaken by virtue of this Agreement without incurring an unavoidable financial loss:
Provided that the minimum number of workers below which the consequences contemplated in Clause 23.1.4 may apply shall be three hundred (300):
Provided further that the Concessionaire shall, as soon as it becomes aware of the circumstances contemplated in Clause 23.1.4, give notice in writing of such fact to the Contracting Authority and the latter shall, within fourteen (14) days from the date of any such notice in writing, communicate its intention in writing as to whether it is in a position to increase the number of Workers to be transferred so that the Concessionaire may continue to fulfil its obligations undertaken therein without incurring an unavoidable financial loss; or
 - 23.1.5 The other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of the Companies Act, Chapter 386 of the Laws of Malta, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of the Commercial Code, Chapter 13 of the Laws of Malta, or (being a partnership) has any partner to whom any of the foregoing apply; or
 - 23.1.6 A petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being



- a company); or
- 23.1.7 An application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company); or
- 23.1.8 Any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in the preceding paragraph hereof; or
- 23.1.9 The other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of the Services.

23.2 Consequences of the Termination of the Concession Agreement

- 23.2.1 Other than as set out in this Agreement, neither Party shall have any further obligation to the other under this Agreement after its termination.
- 23.2.2 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.
- 23.2.3 Termination, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Party existing at Termination.
- 23.3 Upon Termination of this Agreement for any reason, each Party shall as soon as reasonably practicable:
- (a) Return or destroy (as directed by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data in any medium whatsoever provided to it by the other party for the purposes of this Agreement. If required by the other Party, it shall provide written evidence no later than 14 (fourteen) days after termination of this Agreement that these have been destroyed and that it has not retained any copies of them, except for one copy that it may use for audit purposes only and subject to the non-disclosure agreement entered by the Parties to this Agreement;
- 23.4 Upon Termination of the Concession Agreement or the dissolution of the Foundation for whatever reason, all the contracts for services in force between the Foundation and the Social Purpose Entities will be taken over and assumed by the Contracting Authority.
- 23.5 Upon Termination of the Concession Agreement or the dissolution of the Foundation for whatever reason, the workers registered in the books of and employed by the Foundation shall be automatically transferred and taken over by the Contracting Authority in terms of the transfer of business (protection of employment) regulations then in force.

23.6 Damages Suffered

23.6.1 Any right to terminate this Agreement shall not prejudice any claim for damages and/or any other claim in accordance with the Applicable Law competent to:

23.6.1.1 the Concessionaire suffering a breach of the Contracting Authority's obligations; and

23.6.1.2 the Contracting Authority suffering a breach of the Concessionaire's obligations.

Article 24 – Assignment and Sub-Contracting

24.1 Binding on Successors and Assignees

24.1.1 This Agreement shall be binding on and shall enure to the benefit of the Concessionaire and the Contracting Authority and their respective successors and permitted assignees, if any.

24.2 Assignment

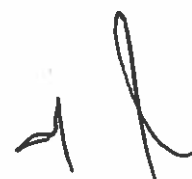
24.2.1 Without prejudice to the provisions of Article 6.22, the Concessionaire shall for the duration of this Agreement be prohibited from assigning or transferring the concession, and/or any part of their rights and/or duties under the concession to third parties without the prior approval of the Contracting Authority. No attempted assignment or transfer shall relieve the Concessionaire from any contractual or other responsibility assumed by it or created as a result of the concession.

24.2.2 The Contracting Authority may, without the need of any prior consent or authorisation from the Concessionaire, transfer its rights and obligations under this Agreement to a government ministry, government department, or other body established or incorporated by an Act of Parliament, or government entity in which the Government has a controlling interest whether or not such organisation is established by law, which has sufficient legal capacity and credit status, either alone or with others, to enter into and meet the obligations under this Agreement:

Provided that in the event of any such transfer of rights and obligations, all the obligations of MIMCOL the Contracting Authority under this Agreement shall be assumed by the transferee.

24.3 Sub-Contracting

24.3.1 The Concessionaire shall not have the right to sub-contract the Services or any part thereof without the written consent of the Contracting Authority.



Article 25 – Information and Confidentiality

- 25.1** Subject to the provisions of the following sub-Article, the Parties shall procure to keep confidential all matters relating to this Agreement and any documents which are expressly stated to be, or if in writing marked as, confidential which term shall, for the purposes of this Article include commercially sensitive Information.
- 25.2** The preceding Sub-Article shall not apply to:
- 25.2.1** any disclosure with the prior written consents of the other Party;
 - 25.2.2** any disclosure of information that is reasonably required by the Parties in the performance of their obligations under this Agreement, including for the purpose of sub-contracting;
 - 25.2.3** any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of the breach of the provisions of this Article 25;
 - 25.2.4** any matter reasonably deemed by the Contracting Authority to require disclosure in order to ensure transparency and/or compliance with any provisions of the Applicable Law;
 - 25.2.5** any disclosure required in order to enable a decision to be made in arbitration proceedings under the provisions of the Dispute Resolution clause of this Agreement;
 - 25.2.6** any disclosure of information which is already lawfully in the possession of the receiving Party prior to its disclosure by the disclosing Party;
 - 25.2.7** any disclosure by the Contracting Authority of all or any information relating to the design, construction, operation and/or maintenance of the Sites and any strategic information or information relating to national security or other restricted or privileged information as may reasonably be required in connection with the conduct of any due diligence required by lenders, investors, advisers or other interested parties involved in any public offerings, listings and similar transactions concerning the Contracting Authority;
 - 25.2.8** any disclosure of Information required by the Contracting Authority to fulfil its legal or political obligation to inform the public about this Agreement, and presenting this Agreement to any court or administrative body if they consider this to be necessary for the performance of their legal or political obligations or to defend themselves against any claims;
 - 25.2.9** any disclosure of Information by the Contracting Authority to any public bodies, including any disclosure to the House of Representatives of Malta (and any of its parliamentary committees), the Auditor General,

the Accountant General, and the Parliamentary Ombudsman, should the Contracting Authority consider this to be necessary to fulfil any legal or political obligations which it may have;

- 25.2.10 any disclosure by the Contracting Authority of any document related to this Agreement and which the Concessionaire has reasonably agreed with the Contracting Authority as containing no commercially sensitive information;
- 25.2.11 any disclosure required by the Contracting Authority under the Freedom of Information Act (Chapter 496 of the Laws of Malta) (the "FoIA"); and
- 25.2.12 any disclosure for the purpose of:
 - 25.2.12.1 the examination and certification of the Contracting Authority's or the Concessionaire's accounts or financial statements; or
 - 25.2.12.2 any examination or verification pursuant to any provision of the Applicable Law; or
 - 25.2.12.3 any examination or verification which may be required pursuant to or in connection with Parliamentary requirements or procedures.
- 25.3 In the instances where disclosure is permitted under the foregoing provisions of this clause the Parties agree that the recipient of any information shall be subjected to the same obligation of confidentiality as that contained in this Agreement and to this end the disclosing Party shall, before disclosing the Information, procure from the recipient of the Information an appropriate confidentiality undertaking.
- 25.4 Except with the prior written consent of the Contracting Authority, the Concessionaire shall not make use of this Agreement or any information issued or provided by or on behalf of the Contracting Authority in connection with this Agreement otherwise than for the purpose of this Agreement.
- 25.5 Except as required by Applicable Law, no Party shall make any press release or public announcement concerning the signing and execution of this Agreement or the transactions contemplated hereby or herein without the approval of the other Party; without limiting the generality of the foregoing, the consideration or fees payable and other financial terms contained in this Agreement shall be maintained in strict confidence, save as may be required by the Applicable Law or as otherwise agreed by the Parties.

Article 26 – Freedom of Information Act and other Transparency Obligations

26.1 Freedom of Information

26.1.1 The Concessionaire acknowledges that the Contracting Authority is subject to the requirements of the Freedom of Information Act (Chapter 496 of the Laws of Malta) (the "FoIA") and may be obliged under the FoIA to disclose Information without consulting or obtaining the consent of the Concessionaire.

26.1.2 The Concessionaire shall:

26.1.2.1 assist and co-operate with the Contracting Authority in order to enable the Contracting Authority to comply with its obligations under the FoIA;

26.1.2.2 transfer to the Contracting Authority all requests for information made under the FoIA relating to the Concession and any ancillary aspect to it that it or they (as the case may be) receives as soon as practicable and in any event within 2 (two) Days of receipt;

26.1.2.3 provide the the Contracting Authority with a copy of all information belonging to the Contracting Authority requested in the Request For Information which is in its possession or control in the form that the Contracting Authority requires within 5 (five) Days (or such other period as the Contracting Authority may reasonably specify) of the the Contracting Authority's request for such information; and

26.1.2.4 not respond directly to a request for information under the FoIA, unless authorised in writing to do so by the Contracting Authority.

26.1.3 The Contracting Authority shall take reasonable steps to notify the Concessionaire of a request for information made under the FoIA to the extent that it is permissible and reasonably practical for the Contracting Authority to do so but (notwithstanding any other provision in this Agreement) the Contracting Authority shall be responsible for determining in its absolute discretion whether any Information is exempt from disclosure in accordance with the FoIA.

26.2 Other Transparency Requirements

26.2.1 The Concessionaire acknowledges that the Contracting Authority retains absolute discretion whether it discloses any information to the House of Representatives (and any of its parliamentary committees), the Auditor General, the Accountant General, the Parliamentary Ombudsman and any other Public Body, without any need of consulting or obtaining the consent of the Concessionaire for this disclosure.

26.2.2 The Concessionaire shall:



- 26.2.2.1 provide the the Contracting Authority with a copy of all information belonging to the Contracting Authority which is to be disclosed under the foregoing sub-article and which is in the Concessionaire's possession or control in the form that the Contracting Authority requires within 5 (five) Days (or such other period as the Contracting Authority may reasonably specify) of the the Contracting Authority's request for such Information; and
- 26.2.2.2 not engage directly with any of the entities mentioned in the foregoing sub-article in relation to the Concession and any ancillary aspect thereto, unless authorised in writing to do so by the Contracting Authority.

Article 27 – Dispute Resolution

27.1 General

- 27.1.1 The resolution of any Dispute arising out of or in connection with any aspect of this Agreement shall be subject to the provisions of this clause.

27.2 Amicable Dispute Resolution

- 27.2.1 If a Dispute arises between the Concessionaire and the Contracting Authority in relation to this Agreement, the Concessionaire and the the Contracting Authority shall actively seek to enter into good faith negotiations to resolve the Dispute within 20 (twenty) Days from the date of receipt of a formal written notification of the Dispute.

- 27.2.2 If any Dispute is resolved pursuant to this sub-Article (the “Resolution”), a written memorandum (a “Memorandum of Resolution”) shall be prepared and signed by each of the Concessionaire and the the Contracting Authority; the Memorandum of Resolution shall:

27.2.2.1 confirm that the Resolution is in full and final settlement of the Dispute;

27.2.2.2 record all matters in issue and all material factual details of the Dispute and the precise terms of the Resolution; and

27.2.2.3 a copy shall be supplied to the Parties.

27.3 Alternative Dispute Resolution and Arbitration

- 27.3.1 If the Concessionaire and the Contracting Authority fail to achieve a Resolution, either Party may refer the dispute for final settlement to the Malta Arbitration Centre for resolution in accordance with the Arbitration Act (Cap 387 of the Laws of Malta).



27.3.2 The arbiters shall be three (3) in number, the seat of arbitration shall be Malta, the language of the arbitration proceedings shall be English and all correspondence exchanged, including documents presented, shall be in English or shall be accompanied by a translation into English at the expense of the Party producing the correspondence or documents.

27.3.3 In case of arbitration proceedings during the Concession Period, this Agreement and the rights and obligations of the Parties hereunder shall remain in full force and effect pending the award in such arbitration proceedings.

Article 28 – Governing Law and Jurisdiction

28.1 Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof, shall be governed by the substantive laws of the Republic of Malta.

28.2 Subject to the provisions of Article 44 (Dispute Resolution), the parties agree to submit to the exclusive jurisdiction of the Courts of Malta as regards any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof.

Article 29 – Waivers, Consents and Amendments

29.1 *Waivers and Consents*

29.1.1 Any waiver by either Party of any provision of this Agreement or of the breach of any provision, term, condition, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be nor construed as a further or continuing waiver of any such or other provision of this Agreement or of the breach of any such or other provision, term, condition, covenant, representation or warranty contained in this Agreement. Any failure by either Party at any time to enforce any provision of this Agreement or to take action upon any breach of any provision, term, condition, covenant, representation or warranty contained in this Agreement shall not affect its right thereafter to require complete performance by the other Party.

29.1.2 Any consent under or pursuant to any provision of this Agreement must be given in writing prior to the event, action or omission in respect of which it is sought;

29.1.3 Any such waiver or consent may be given subject to any conditions thought fit by the Party giving it and shall be effective only in the instance and for the purpose for which it is given.

29.2 Amendments

29.2.1 Any provision of this Agreement may be amended, supplemented or modified only by an agreement in writing signed by the Parties.

29.2.2 Notwithstanding the terms of any other provision of this Agreement, it shall not be a breach of this Agreement if any amendment, supplement or modification to any provision of this Agreement requires authorisation or ratification in terms of the Applicable Law or if the authorisation or ratification required under the Applicable Law is not then granted or obtained.

Article 30 – Miscellaneous Provisions

30.1 Severability

In the event that any term, condition or provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent by any court, judicial or administrative tribunal, regulatory body or arbitrator, such term, condition or provision shall to that extent be deemed omitted from this Agreement but shall survive to the extent it is not so held, and all of the other provisions of this Agreement shall remain in full force and effect;

Provided that if, in the case of any such term, condition or provision, it would not have been so held were any amount as to time, monetary sum or otherwise been expressed as a lesser amount, such term, condition or provision shall be deemed for all effects and purposes of this Agreement to have been written and expressed at the date of signing and execution of this Agreement as such a lesser amount.

30.2 Entire Agreement

This Agreement constitutes the entire understanding between the Parties in relation to the subject matter of this Agreement and is based on the RFP, the RFP proposal submitted by the Concessionaire and any changes thereto agreed to by and between the Parties during the negotiations leading to this Agreement.

30.3 No Partnership

Neither this Agreement nor the performance by the Parties of their respective obligations under this Agreement shall constitute a partnership or joint venture between the Parties; no Party shall have any authority (unless expressly conferred to it in writing by virtue of this Agreement or otherwise and is not revoked) to bind the other Party as its agent or otherwise.

30.4 Survival

Termination:

30.4.1 shall not relieve the Concessionaire or the Contracting Authority from any obligations under this Agreement which expressly or by implication survive Termination hereof; and

30.4.2 except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligation for loss or damage to the other Party arising out of or caused by any act or omission of such Party prior to the coming into effect of such Termination or arising out of such Termination.

30.5 *Set-off*

The Contracting Authority shall not be entitled to retain or set off any amount due to the Concessionaire by it.

30.6 *Exclusion of Implied Warranties*

This Agreement expressly excludes any implied warranty, condition or undertaking unless contained in a binding legal agreement between the Parties.

Article 31 - Notices

31.1 All notices required to be given under this Agreement and all consents, requests, demands and other communications under or pursuant to this Agreement shall be in the English language.

31.2 All notices required to be given under this Agreement and all consents, requests, demands and other communications under or pursuant to this Agreement shall be given or made in writing and may be so given or made by, e-mail or registered letter.

31.3 The postal address and e-mail address for the purposes of any notice, consent, request, demand and other communication in writing to the Contracting Authority shall be:

Postal address: MIMCOL, The Clock Tower, Tigne Point, Sliema
E-mail address: john.s.busuttil@mgis.com.mt

or any substitute addresses or e-mail addresses as the Contracting Authority may notify to the other Parties in writing with not less than five (5) Days' notice.

31.4 The postal address and e-mail address for the purposes of any notice, consent, request, demand and other communication in writing to the Concessionaire shall be:

Postal Address: GWU, Workers' Memorial Building,
South Street, Valletta
E-mail address: jbujeja@gwu.org.mt

or any substitute addresses or e-mail addresses as the Concessionaire may notify to the other Parties in writing with not less than five (5) Days' notice.

31.5 Unless otherwise provided in this Agreement, any notice or communication given or made under or pursuant to this Agreement shall be deemed to have been duly given and received by the addressee:

31.5.1 if sent by e-mail to the relevant e-mail address, on the same Day of transmission; and

31.5.2 if mailed, on the 5th (fifth) Day after mailing by express or first class or registered mail, postage prepaid and properly addressed to the addressee; and

31.5.3 if sent by a major internationally-recognised overnight courier company, on the 3rd (third) Day after delivery to the courier company.

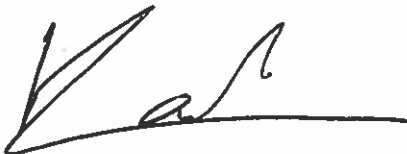
Signed in acceptance of the above terms:

CONTRACTING AUTHORITY



SIGNED by John S. Busuttil
for and on behalf of Malta Investment Management Company Limited

CONCESSIONAIRE



SIGNED by Victor Carachi
for and on behalf of the General Workers' Union



Schedule 1: PERFORMANCE SECURITY

To: **Malta Investment Management Company Limited**
Clock Tower, Level 1
Tigne Point
Sliema

DATE

Dear Sirs,

Our Guarantee Number _____

We refer to the Concession Agreement entered into between _____ (*name and address of Concessionaire*) (the "Concessionaire") and the (hereinafter the Contracting Authority) for the operation and management of the Community Work Scheme Enterprise Foundation pursuant to the RFP and the subsequent selection of the Concessionaire following the RFP Process. We also refer to your requirement that the Concessionaire should provide you with a bank guarantee in the amount of €100,000 (one hundred thousand euro) to warrant the due and proper performance by the Concessionaire of all its obligations under or pursuant to the Concession Agreement.

Now, therefore, we _____ (Name of Bank) _____ hereby irrevocably and unconditionally guarantee to pay you on demand a maximum amount €100,000 (one hundred thousand euro) in case the obligations to be undertaken by the Concessionaire under or in pursuance of the Concession Agreement are not duly, properly and punctually performed by the Concessionaire.

It is understood that this guarantee will become payable on your first written demand and that it shall not be incumbent upon us to verify whether such demand is justified.

For the avoidance of doubt it is hereby declared that although this guarantee gives rise to legal relations between us as guarantor and yourself, this does not exempt the Concessionaire from any obligation/s or undertaking/s assumed or given by it under or in pursuance of the Concession Agreement.

This guarantee shall become effective on the Commencement Date of the Concession Agreement by the relative parties thereto and shall expire on _____¹ and unless it is extended by us or returned to us for cancellation before that date, any demand made by you for payment must be received in writing not later than the aforementioned expiry date.

This guarantee should be returned to us for cancellation on utilisation or expiry or in the event the guarantee being no longer required by you.

Yours faithfully,

o.b.o (Name of Bank)

Countersigned by
Concessionaire

¹Insert date corresponding to the expiration of twelve months from the date of expiry of the term of the Concession Agreement.



SCHEDULE 2: OPERATIONAL SERVICE FEE

PROPOSER'S CWSE Foundation Operational Service Fees: €980 per registered person per month to be paid as follows:

Month	Narrative	Proportion of Payment
1	Pre-financing	1/12
End of Month 1	Payment 1	1/12
End of Month 2	Payment 2	1/12
End of Month 3	Payment 3	1/12
End of Month 4	Payment 4	1/12
End of Month 5	Payment 5	1/12
End of Month 6	Payment 6	1/12
End of Month 7	Payment 7	1/12
End of Month 8	Payment 8	1/12
End of Month 9	Payment 9	1/12
End of Month 10	Payment 10	1/12
End of Month 11	Payment 11	1/12
End of Month 12	Payment 12 (Pre advance for following Year)	
TOTAL		12/12