

01 FEBRUARY 2022

**FRAMEWORK AGREEMENT FOR THE PROVISION OF
MANAGEMENT, COLLECTION, SLAUGHTER, SALVAGE AND
DISPOSAL OF FARMED LIVESTOCK FOR TB CONTROL
PURPOSES (REACTOR REMOVAL)**

between

THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

and

[SUPPLIER NAME]

CONTENTS

CLAUSE

1.	Definitions and interpretation	4
2.	Term of Framework Agreement.....	10
3.	Scope of Framework Agreement.....	10
4.	Award procedures.....	10
5.	Contract performance and precedence of documents	11
6.	Prices for Services.....	13
7.	Warranties and representations	14
8.	Service pre-requisites	14
9.	governance and contract management	14
10.	Records and audit access	16
11.	Confidentiality.....	17
12.	Official Secrets Acts	18
13.	Data protection.....	18
14.	Freedom of information.....	22
15.	Publicity	23
16.	Guarantee	23
17.	Termination	23
18.	Suspension of Contractor's appointment	25
19.	Consequences of termination and expiry	26
20.	Complaints handling and resolution	26
21.	Dispute resolution	27
22.	Prevention of bribery	27
23.	Subcontracting and assignment	29
24.	Variations to Framework Agreement	29
25.	Third party rights	30
26.	Severance	30
27.	Rights and remedies	30
28.	Waiver	30
29.	Entire agreement	30
30.	Notices.....	31
31.	Governing law and jurisdiction	31

SCHEDULES

SCHEDULE 1	SPECIFICATION OF REQUIREMENTS AND LOTS	ERROR! BOOKMARK NOT DEFINED.
SCHEDULE 2	PRICING MATRICES	ERROR! BOOKMARK NOT DEFINED.
SCHEDULE 3	ORDER FORM.....	ERROR! BOOKMARK NOT DEFINED.
SCHEDULE 4	CALL-OFF TERMS AND CONDITIONS.....	ERROR! BOOKMARK NOT DEFINED.
SCHEDULE 5	FRAMEWORK AGREEMENT VARIATION PROCEDURE	ERROR! BOOKMARK NOT DEFINED.

THIS AGREEMENT is dated 01 February 2022

PARTIES

- (1) THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS at 17 Smith Square, London, SW1P 3JR (**Authority**).
- (2) [SUPPLIER NAME] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [SUPPLIER ADDRESS] (**Contractor**).

BACKGROUND

- (A) The Authority placed contract notice 2021-042244 on 31 August 2021 on the Find a Tender Service seeking Tenders from potential service providers for the provision of Services (divided into Lots) to itself and the Other Contracting Bodies identified in the contract notice under a framework agreement.
- (B) The Authority invited any potential service providers (including the Contractor) on 31 August 2021 to tender for the provision of management, collection, slaughter, salvage and disposal of farmed livestock for TB control purposes (Reactor Removal) services.
- (C) On the basis of the Contractor's Tenders, the Authority selected the Contractor to enter into a framework agreement to provide services to those Customers who place Orders for Lots in accordance with this Framework Agreement.
- (D) This Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of the Services and the obligations of the Contractor under this Framework Agreement.
- (E) It is the Parties' intention that Customers have no obligation to place Orders with the Contractor under this Framework Agreement or at all.
- (F) Execution of the Framework Agreement is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Framework Agreement is formed on the date on which both Parties communicate acceptance of its terms on the Authority's electronic contract management system ("Bravo").

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this Framework Agreement.

APHA: means the Animal and Plant Health Agency.

Approval: means the prior written approval of the Authority.

Audit: means an audit carried out pursuant to clause 9.

Auditor: means the National Audit Office or an auditor appointed by the Authority as the context requires.

Authorised Representative: means the persons respectively designated as such by the Authority and the Contractor, the first such persons being set out in clause 30.

Authority: means the Department for Environment, Food and Rural Affairs.

Award Criteria: means the Evaluation and Award criteria as set out in the ITT.

Call-off Terms and Conditions: means the terms and conditions in **Error! Reference source not found.**

Change of Control: means a change of control within the meaning of section 450 of the Corporation Tax Act 2010.

Commencement Date: means 01 February 2022.

Complaint: means any formal complaint raised by any Customer in relation to the performance under the Framework Agreement or any Contract in accordance with clause 20.

Confidential Information: means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Contractors of the Contractor, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.

Call-off Contract or Contract: means a legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between a Customer and the Contractor comprising the Call-off Terms and Conditions (as may be amended pursuant to clause 1.2).

Contractor's Lots: means the lots to which the Contractor has been appointed under this Framework Agreement as set out in Schedule 1.

Controller: has the meaning given to it in the UK GDPR.

Customer: means the Authority and any other contracting authority (as defined in regulation 2 of the Regulations) described in the FTS Notice.

Customer Data: means any Personal Data for which the Customer is the Data Controller.

Data Loss Event: means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under the Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data Breach.

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Data Protection Legislation: means: (i) the UK GDPR and any applicable national implementing Laws as amended from time to time; (ii) the Data Protection Act 2018 to the extent that it relates to Processing of personal data and privacy; and (iii) all applicable Law about the Processing of personal data and privacy.

Data Protection Officer: has the meaning given to it in the UK GDPR.

Data Subject: has the meaning given to it in the UK GDPR.

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Default: means any breach of the obligations of the relevant Party under a Contract (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

Environmental Information Regulations or EIRs: mean the Environmental Information Regulations 2004 (*SI 2004/3391*) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

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

Framework Agreement: means this agreement and all Schedules to this agreement.

Framework Agreement Variation Procedure: means the procedure set out in **Error! Reference source not found..**

Framework Providers: means the Contractor and other Contractors appointed as framework providers under this Framework Agreement.

Framework Year: means a period of 12 months, commencing on the Commencement Date.

FTS Notice: means the contract notice 2021-042244 on 31 August 2021 (covering Lots 1, 2, 3, 4, 5 and 6) published in the Official Journal of the European Union.

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

Guidance: means any guidance issued or updated by the UK government from time to time in relation to the Regulations.

Information: has the meaning given under section 84 of the FOIA.

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

IP Completion Day: has the meaning given to it in the European Union (Withdrawal) Act 2018.

Law: means any law, statute, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of Section 4(1) EU Withdrawal Act 2018 as amended by EU (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Parties are bound to comply.

Lots: means the Services divided into lots as referred to in the FTS Notice and set out in the ITT.

Month: means a calendar month.

Order or Order Form: means the TB161 form that is sent by the Authority to the Contractor to confirm the details of the Premises and number of Reactors that require collection, transportation to the Contractor's Slaughterhouse, slaughter, salvage and disposal in accordance with the award procedures in *clause 4*.

Other Contracting Bodies: means all Customers except the Authority.

Parent Company: means any company which is the ultimate Holding Company of the Contractor and which is either responsible directly or indirectly for the business activities of the Contractor or which is engaged in the same or similar business to the Contractor. **Holding Company** shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

Party: means the Authority and/or the Contractor.

Personal Data: has the meaning given to it in the UK GDPR.

Personal Data Breach: has the meaning given to it in the UK GDPR.

Processing: has the meaning given to it in the UK GDPR.

Processor: has the meaning given to it in the UK GDPR.

Pricing Matrices: means the pricing matrices set out in **Error! Reference source not found..**

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Framework Agreement or any other contract with the Authority; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Authority.

Reactors: means an animal that produces a positive reaction to a relevant test which is consistent with it being infected with M bovis or is suspected of having bovine TB

Regulations: means the Public Contracts Regulations 2015 (*SI 2015/102*).

Regulatory Bodies: means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules,

regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Authority.

Requests for Information: shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).

Services: means the provision of management, collection, slaughter, salvage and disposal of farmed livestock for TB control purposes (Reactor Removal) services as detailed in **Error! Reference source not found..**

Slaughterhouse: means an FSA or FSS approved Slaughterhouse for the Slaughter of TB Reactors.

Staff: means all persons employed by the Contractor together with the Contractor's servants, agents, Contractors and Sub-contractors used in the performance of its obligations under this Framework Agreement or Contracts.

Subcontract: any contract between the Contractor and a third party pursuant to which the Contractor agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or service providers that enter into a Subcontract with the Contractor.

Subprocessor: any third party appointed to process Personal Data on behalf of the Contractor related to a Contract.

Sustainability Requirements: means any relevant social or environmental strategies, policies, commitments, targets, plans or requirements that apply to and are set out in the Specification of Requirements.

SQ Response: means the response to the selection questionnaire submitted by the Contractor to the Authority on [DATE/LOT NUMBER]

Specification of Requirements means the Authority's requirements from the Services as set out in Schedule 1.

Tender: means the tender submitted by the Contractor to the Authority on [DATE/LOT NUMBER]

Term: means the period commencing on the Commencement Date and ending on 31 January 2026 or on earlier termination of this Framework Agreement.

Termination Date: means the date of expiry or termination of this Framework Agreement.

UK GDPR: means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (and see section 205(4)).

Working Days: means any day other than a Saturday, Sunday or public holiday in England, Wales, Scotland.

Year: means a calendar year.

- 1.2 The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- (g) the Schedules form part of this Framework Agreement and shall have effect as if set out in full in the body of this Framework Agreement and any reference to this Framework Agreement shall include the Schedules;
- (h) references in this Framework Agreement to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to this Framework Agreement so numbered;
- (i) references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered; and
- (j) reference to a clause is a reference to the whole of that clause unless stated otherwise.
- (k) any reference in this Framework Agreement which immediately before the IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to Section 1A of the European Union (Withdrawal) Act 2018) is a reference to (as it has effect from time to time):
 - i. any EU regulation, EU decision, EU tertiary legislation or provision of the European Economic Area ("EEA") agreement ("EU References") which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
 - ii. any EU institution or EU authority or other such EU body shall be read on and after IP Completion Day as a reference to the UK institution, authority or body to which its functions were transferred.

PART ONE: FRAMEWORK ARRANGEMENTS AND AWARD PROCEDURE

2. TERM OF FRAMEWORK AGREEMENT

The Framework Agreement shall take effect on the Commencement Date and (unless it is terminated in accordance with the terms of this Framework Agreement or is otherwise lawfully terminated) shall terminate at the end of the Term.

3. SCOPE OF FRAMEWORK AGREEMENT

- 3.1 This Framework Agreement governs the relationship between the Authority and the Contractor in respect of the provision of the Services by the Contractor to Customers.
- 3.2 The Authority appoints the Contractor as a Framework Provider of the Services and the Contractor shall be eligible to enter into a Call-off Contract and receive Orders for such Services from Customers during the Term.
- 3.3 Customers may at their absolute discretion and from time to time order Services from the Contractor in accordance with the ordering procedure set out in clause 4 during the Term. The Parties acknowledge and agree that the Other Contracting Bodies have the right to order Services pursuant to this Framework Agreement provided that they comply at all times with the Regulations and the ordering procedure in clause 4. If there is a conflict between *clause 4* and the Regulations, the Regulations shall take precedence.
- 3.4 If and to the extent that any Services under this Framework Agreement are required each and every Customer shall:
 - (a) enter into a contract with the Contractor for these Services materially in accordance with the terms of the Contract; and
 - (b) comply with the ordering procedure in *clause 4*.
- 3.5 The Contractor acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Customer for the Services and that the Customer is at all times entitled to enter into other contracts and arrangements with other contractors for the provision of any or all services which are the same as or similar to the Services.
- 3.6 The Authority shall not in any circumstances be liable to the Contractor or any Other Contracting Body for payment or otherwise in respect of any Services provided by the Contractor to any Other Contracting Body.

4. AWARD PROCEDURES

Awards under the Framework Agreement

- 4.1 The Authority and the Contractor shall enter into a Call-off Contract pursuant to this Framework Agreement. Once the Call-off Contract has been executed by both parties, the Contractor shall then become eligible to receive Orders.

- 4.2 In Lots where multiple contractors are appointed, the Authority will allocate Orders using the Selection Methodology as set out in the Specification of Requirements in Schedule 1.

Responsibility for awards

- 4.3 The Contractor acknowledges that each Customer is independently responsible for the conduct of its award of Contracts under the Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
- (a) the conduct of Other Contracting Bodies in relation to the Framework Agreement; or
 - (b) the performance or non-performance of any Contracts between the Contractor and Other Contracting Bodies entered into pursuant to the Framework Agreement.

Form of Order

- 4.4 Subject to clause 4.1 to clause 4.3 above, each Customer may place an Order with the Contractor by serving an order in writing in substantially the form set out in **Error! Reference source not found.** or such similar form agreed with the Contractor including systems of ordering involving fax, e-mail or other online solutions.

5. CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS

Performance Management

- 5.1 As part of the Authority's continuous drive to improve the performance of all contracts, a Performance Management Framework (**PMF**) will be used to monitor, measure and control all aspects of the Contractor's performance of contract responsibilities.
- 5.2 The purpose of the PMF is to set out the obligations on the Contractor, to outline how the Contractor's performance will be evaluated and to detail the sanctions for performance failure. The Contractor is responsible for the performance of any Sub-Contractors.
- 5.3 Key Performance Indicators (**KPIs**) are essential to align Contractor performance with the requirements of the Authority. The KPIs are set out in the Specification of Requirements. They will be monitored on a monthly, quarterly or annual basis as appropriate to the service and will form part of the contract performance review.
- 5.4 The Authority will be entitled to refine, vary or modify the KPIs, performance standards and service credits from time to time during the Contract Period through a variation to be agreed with the Contractor using a Contract Change Notice (**CCN**).
- 5.5 Where a KPI has a percentage measure, the Contractor's performance will be rounded to the nearest whole number.
- 5.6 The Authority will produce a monthly and quarterly Performance Management report, to be sent to the Contractor, detailing the Contractor's performance against KPIs.

- 5.7 The Contractor will maintain their own management reports, including Issues Log, which will include detail on periodic checks to ensure quality.
- 5.8 Any performance issues highlighted in the monthly reports will be addressed by the Contractor, who will be required to provide an improvement plan to address all issues highlighted within a week of receipt of the report. Monthly performance management reports and KPI performance will be a key feature of Quarterly Contract Review meetings.
- 5.9 Where performance failure attributable to the Contractor is identified in the Performance Management report and relates to the KPIs then the service credit regime may apply, at the sole discretion of the Authority.

Service Credits

- 5.10 The use of service credits is governed by the following principles:
- (a) Service credits sit within the wider service management approach being pursued by the Contractor and the Authority. Use of service credits does not preclude any other remedy for failure of performance available to the Authority under the terms and conditions of the contract.
 - (b) The service credit regime will be instigated on each occasion when there is a service failure (i.e. where a KPI is identified as having a 'Red status') within the performance monitoring period. Failure to meet a KPI may also give rise to a remediation plan.
 - (c) KPIs with a service credit rating of 0 will have no associated service credit.
 - (d) KPIs with a service credit rating of 1 will have a service credit of 3% of the invoice amount for the monitoring period, applied for each KPI failure.
 - (e) KPIs with a service credit rating of 2 will have a service credit of 5% of the invoice amount for the monitoring period, applied for each KPI failure.
 - (f) The maximum annual service credit to be applied will be no more than 10% of the total annual contract value per Contractor.
- 5.11 The Contractor will provide the Authority with the information listed in the Specification of Requirements and such other supporting information as the Authority may reasonably request in order to determine the proper application of any service credits due.
- 5.12 For Services where the Contractor is paid by the Authority, service credits will be paid to the Authority as a credit note to the next invoice.
- 5.13 For Services where the Contractor recovers costs directly, service credits will be paid to individual users of the Service as a credit note to their next invoice. The Contractor will propose how the service credit amounts will be applied to each user of the Service.
- 5.14 The full, agreed service credit regime will operate from the initial delivery date until the end of the Term. At the end of the first complete performance monitoring period, the Authority and the Contractor will enter into good faith discussions to review the KPIs and assess their

effectiveness. The KPIs may be adjusted to ensure that they are appropriate and achievable. The Contractor shall perform all Contracts entered into with a Customer in accordance with:

- (a) the requirements of this Framework Agreement; and
- (b) the terms and conditions of the respective Contracts.

5.15 The Contractor will support the Customer in highlighting opportunities to provide wider social, economic, or environmental benefits to communities through the delivery of the Contracts that it enters into with the Customer.

5.16 In the delivery of the Services, the Contractor will ensure that supply chain opportunities are inclusive and accessible to:

- (a) new businesses and entrepreneurs;
- (b) small and medium enterprises (SMEs);
- (c) voluntary, community and social enterprise (VCSE) organisations;
- (d) mutuals; and
- (e) other underrepresented business groups.

5.17 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Framework Agreement and the terms and conditions of a Contract, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the clauses of the Contract;
- (b) the Order Form;
- (c) the terms of the Framework Agreement, the Schedules to the Framework Agreement and the Order Form;
- (d) any other document referred to in the clauses of the Contract.

6. PRICES FOR SERVICES

6.1 The prices offered by the Contractor shall be based on the prices set out in the Pricing Matrices and tendered in accordance with the Specification of Requirements.

6.2 Prices must be submitted in £ Sterling, exclusive of VAT.

6.3 The Framework is to be awarded with maximum prices for haulage and slaughter and a fixed price for disposal which will be paid according to the deliverables stated in the Specification of Requirements, Section 3. A percentage of the salvage value will be returned to the Authority, as set out in Section 2, Stage 4 of the Specification of Requirements.

CONTRACTOR'S GENERAL FRAMEWORK OBLIGATIONS

7. WARRANTIES AND REPRESENTATIONS

The Contractor warrants and represents to the Authority and to each of the Other Contracting Bodies that:

- (a) it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement;
- (b) this Framework Agreement is executed by a duly authorised representative of the Contractor;
- (c) in entering into this Framework Agreement or any Contract it has not committed any Prohibited Act;
- (d) as at the Commencement Date, all information, statements and representations contained in the Tender and the SQ Response are true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority before the execution of this Framework Agreement and it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under this Framework Agreement and any Contract which may be entered into with the Authority or Other Contracting Bodies;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Contract; and
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue.

8. SERVICE PRE-REQUISITES

The Contractor shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Framework Agreement and any Contract.

CONTRACTOR'S INFORMATION OBLIGATIONS

9. GOVERNANCE AND CONTRACT MANAGEMENT

- 9.1 APHA will manage the contracts for services resulting from this procurement on behalf of the Authority. APHA will appoint a:

- Supplier Liaison Officer (SLO)
- Deputy SLO (DSLO)
- Contract Manager (CM)

- 9.2 APHA will decide as appropriate for each contract whether the SLO or DSLO is the principal point of contact.
- 9.3 The Contractor will appoint a corresponding Service Manager (SM) and Deputy Service Manager (DSM).
- 9.4 Monthly and Quarterly meetings will be held with each Contractor, principally to review progress and operational delivery of the Contract, but also including key performance indicators (KPIs), invoicing, risks and issues. A Defra Group Commercial (DGC) representative, with responsibility for procurement on behalf of the Authority, may be present at quarterly and annual review meetings.
- 9.5 The Contractor will submit an exception report to raise any issue requiring authorisation by APHA more immediately than the standard monthly reporting.
- 9.6 A strategic review meeting will be held annually. The meeting will review performance over the past year and look ahead to the next year, including strategic and financial issues. The risk, issues and actions register will be reviewed.
- 9.7 Issues which cannot be resolved by the SLO and SM (and/or their respective Deputies) through routine contact or in the monthly meetings will be referred to the CM who may either mediate a solution or raise the matter at the next Quarterly and/or Annual Review Meeting as appropriate, involving the Authority as necessary.
- 9.8 Other ad hoc meetings may be held, at the discretion of APHA or the Authority or at the request of the Contractor, throughout the life of the contract to discuss specific issues.
- 9.9 The Contractor will be responsible for travel and subsistence costs incurred as a result of attendance at any meeting. Meetings may also be held by teleconference with the agreement of all parties.
- 9.10 Quarterly and Annual meetings will be held at the most mutually convenient location, usually face-to-face, but with teleconference facilities available.
- 9.11 Quarterly and Annual meetings will be minuted, with secretariat support and actions provided by APHA, with agreed dates for completion. The Contractor will maintain a joint register of risks, issues and actions.

- 9.12 The CM should ensure that all meeting minutes, risk registers and any other contract documentation is recorded against the Authority's contract records.
- 9.13 The purpose of each of these meetings with each Contractor, and the required attendees, are set out in the Specification of Requirements.

10. RECORDS AND AUDIT ACCESS

- 10.1 The Contractor shall keep and maintain until six years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Services provided under it, the Contracts entered into with Customers and the amounts paid by each Customer. If the Authority, acting reasonably, is concerned either:

- (a) as to the financial stability of the Contractor such that it may impact on the continued performance of the Contract; or
- (b) as to the sustainability or health and safety conduct of the Contractor, Sub-Contractors and supply chain in the performance of the Contract;

then the Authority may:

- (i) require that the Contractor provide to the Authority (for its approval) a plan setting out how the Contractor will ensure continued performance of the Contract (in the case of (a)) or improve its sustainability conduct or performance (in the case of (b)) and the Contractor will make changes to such plans as reasonably required by the Authority and once it is agreed then the Contractor shall act in accordance with such plan and report to the Authority on demand
 - (ii) if the Contractor fails to provide a plan or fails to agree any changes which are requested by the Authority or materially fails to implement or provide updates on progress with the plan, terminate the Contract immediately for material breach (or on such date as the Authority notifies).
- 10.2 The Contractor shall keep the records and accounts referred to in clause 10.1 above in accordance with good accountancy practice.
- 10.3 The Contractor shall afford the Authority or the Auditor (or both) such access to such records and accounts as may be required from time to time.
- 10.4 The Contractor shall provide such records and accounts (together with copies of the Contractor's published accounts) during the Term and for a period of six years after expiry of the Term to the Authority (or relevant Customer) and the Auditor.

- 10.5 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Contractor or delay the provision of the Services pursuant to the Contracts, save insofar as the Contractor accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Authority.
- 10.6 Subject to the Authority's rights of confidentiality, the Contractor shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
- (a) all information requested by the Auditor within the scope of the Audit;
 - (b) reasonable access to sites controlled by the Contractor and to equipment used in the provision of the Services; and
 - (c) access to the Staff.
- 10.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 10, unless the Audit reveals a Material Default by the Contractor in which case the Contractor shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the Audit.

11. CONFIDENTIALITY

- 11.1 Subject to clause 11.2, the Parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 11.2 Clause 11.1 shall not apply to any disclosure of information:
- (a) required by any applicable law
 - (b) that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Framework Agreement;
 - (c) that is reasonably required by Other Contracting Bodies;
 - (d) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 11.1;
 - (e) by the Authority of any document to which it is a party and which the Parties to this Framework Agreement have agreed contains no Confidential Information;
 - (f) to enable a determination to be made under clause 21;
 - (g) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
 - (h) by the Authority to any other department, office or agency of the government, provided that the Authority informs the recipient of any duty of confidence owed in respect of the information; and
 - (i) by the Authority relating to this Framework Agreement and in respect of which the Contractor has given its prior written consent to disclosure.

12. OFFICIAL SECRETS ACTS

- 12.1 The Contractor shall comply with and shall ensure that its Staff comply with, the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
 - (b) section 182 of the Finance Act 1989.
- 12.2 In the event that the Contractor or its Staff fail to comply with this clause 12, the Authority reserves the right to terminate this Framework Agreement with immediate effect by giving notice in writing to the Contractor.

13. DATA PROTECTION

- 13.1 The Customer is the Controller of Customer Data and the Contractor is the Processor for the purposes of the Data Protection Legislation.
- 13.2 The Contractor must process Personal Data and ensure that Staff process Personal Data only in accordance with this Contract.
- 13.3 The Contractor shall take all reasonable measures relating to the security of processing which are required pursuant to Article 32 of the UK GDPR including, without limitation, those security measures specified in this clause 13.
- 13.4 The Contractor must not remove any ownership or security notices in or relating to the Customer Data.
- 13.5 The Contractor must make accessible back-ups of all Customer Data, stored in an agreed off-site location, and send the Customer copies every six months.
- 13.6 The Contractor must ensure that any Contractor system holding any Customer Data, including back-up data, is a secure system that complies with the security requirements specified in writing by the Customer.
- 13.7 If at any time the Contractor suspects or has reason to believe that the Customer Data provided under the Contract is corrupted, lost or sufficiently degraded, then the Contractor must notify the Customer and immediately suggest remedial action.
- 13.8 If the Customer Data is corrupted, lost or sufficiently degraded so as to be unusable the Customer may either or both:
- (a) tell the Contractor to restore or get restored Customer Data as soon as practical but no later than five Working Days from the date that the Customer receives notice, or the Contractor finds out about the issue, whichever is earlier; and
 - (b) restore the Customer Data itself or using a third party.

- 13.9 The Contractor must pay each Party's reasonable costs of complying with clause 13.8 unless the Customer is at fault.
- 13.10 Only the Customer can decide what processing of Personal Data a Contractor can do under the Contract and must specify it for the Contract using the template in Annex E of the Contract (*Authorised Processing*).
- 13.11 The Contractor must only process Personal Data if authorised to do so in Annex E to the Contract (*Authorised Processing*) by the Customer. Any further written instructions relating to the processing of Personal Data will be incorporated into Annex E of the Contract.
- 13.12 The Contractor must give all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment before starting any processing, including:
- (a) a systematic description of the expected processing and its purpose;
 - (b) the necessity and proportionality of the processing operations;
 - (c) the risks to the rights and freedoms of Data Subjects; and
 - (d) the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data.
- 13.13 The Contractor must notify the Customer immediately if it thinks the Customer's instructions breach the Data Protection Legislation.
- 13.14 The Contractor must put in place appropriate Protective Measures to protect against a Data Loss Event which must be approved by the Customer.
- 13.15 If lawful to notify the Customer, the Contractor must notify it if the Contractor is required to process Personal Data by Law promptly and before processing it.
- 13.16 The Contractor must take all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
- (a) are aware of and comply with the Contractor's duties under this clause 13;
 - (b) are subject to appropriate confidentiality undertakings with the Contractor or any Subprocessor;
 - (c) are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise allowed by the Contract; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.

13.17 The Contractor must not transfer Personal Data outside of the EU unless all of the following are true:

- (a) it has obtained prior written consent of the Customer;
- (b) the Customer has decided that there are appropriate safeguards (in accordance with Article 46 of the UK GDPR);
- (c) the Data Subject has enforceable rights and effective legal remedies when transferred;
- (d) the Contractor meets its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
- (e) where the Contractor is not bound by Data Protection Legislation it must use its best endeavours to help the Customer meet its own obligations under Data Protection Legislation; and
- (f) the Contractor complies with the Customer's reasonable prior instructions about the processing of the Personal Data.

13.18 The Contractor must notify the Customer immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law;
- (f) becomes aware of a Data Loss Event.

13.19 Any requirement to notify under clause 13.18 includes the provision of further information to the Authority in stages as details become available.

13.20 The Contractor must promptly provide the Customer with full assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 13.18. This includes giving the Customer:

- (a) full details and copies of the complaint, communication or request;
- (b) reasonably requested assistance so that it can comply with a Data Subject Access Request within the relevant timescales in the Data Protection Legislation;
- (c) any Personal Data it holds in relation to a Data Subject on request;

(d) assistance that it requests following any Data Loss Event;

(e) assistance that it requests relating to a consultation with, or request from, the Information Commissioner's Office.

13.21 The Contractor must maintain full, accurate records and information to show it complies with this clause 13. This requirement does not apply where the Contractor employs fewer than 250 staff, unless either the Customer determines that the processing:

(a) is not occasional;

(b) includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR;

(c) is likely to result in a risk to the rights and freedoms of Data Subjects.

13.22 The Contractor will make available to the Customer all information necessary to demonstrate compliance with clause 13 and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor appointed by the Customer.

13.23 The Contractor must appoint a Data Protection Officer responsible for observing its obligations in this Contract and give the Customer their contact details.

13.24 Before allowing any Subprocessor to process any Personal Data, the Contractor must:

(a) notify the Customer in writing of the intended Subprocessor and processing;

(b) obtain the written consent of the Customer;

(c) enter into a written contract with the Subprocessor so that this clause 13 applies to the Subprocessor;

(d) provide the Customer with any information about the Subprocessor that the Customer reasonably requires.

13.25 The Contractor remains fully liable for all acts or omissions of any Subprocessor.

13.26 At any time the Customer can, with 30 Working Days' notice to the Contractor change this clause 13 to:

(a) replace it with any applicable standard clauses (between the controller and processor) or similar terms forming part of an applicable certification scheme under UK GDPR Article 42;

(b) ensure it complies with guidance issued by the Information Commissioner's Office.

13.27 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office.

13.28 The Contractor :

- (a) must provide the Customer with all Customer Data in an agreed open format within 10 Working Days of a written request;
- (b) must have documented processes to guarantee prompt availability of Customer Data if the Contractor stops trading;
- (c) must securely destroy all storage media that has held Customer Data at the end of life of that media using Good Industry Practice;
- (d) must securely erase or return all Customer Data and any copies it holds when asked to do so by the Customer unless required by Law to retain it;
- (e) indemnifies the Customer against any and all losses, damages, costs or expenses (including professional fees and fines) incurred if the Contractor breaches clause 13 and any Data Protection Legislation.

14. FREEDOM OF INFORMATION

- 14.1 The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Contractor shall:
 - (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.
- 14.2 The Contractor acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Contractor. The Authority shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

15. PUBLICITY

- 15.1 Unless otherwise directed by the Authority, the Contractor and any sub contractor shall not make any press announcements or publicise this Framework Agreement in any way without the Authority's prior written consent.
- 15.2 The Authority shall be entitled to publicise this Framework Agreement in accordance with any legal obligation on the Authority, including any examination of this Framework Agreement by the Auditor or otherwise.
- 15.3 The Contractor shall not do anything that may damage the reputation of the Authority or bring the Authority into disrepute.

16. GUARANTEE

On the Authority's request and at the request of each Other Contracting Body, the Contractor shall procure that the Guarantor shall:

- (a) execute and deliver to the Authority or the relevant Other Contracting Body the Guarantee;
- (b) deliver to the Authority or Other Contracting Body a certified copy extract of the board minutes of the Guarantor approving the execution of the Guarantee.

FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION

17. TERMINATION

Termination on Default

- 17.1 The Authority may terminate the Framework Agreement by serving written notice on the Contractor with effect from the date specified in such notice:
- (a) where the Contractor commits a material breach and:
 - (i) the Contractor has not remedied the material breach to the satisfaction of the Authority within 20 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the material breach and requesting it to be remedied; or
 - (ii) the material breach is not, in the reasonable opinion of the Authority, capable of remedy; or
 - (b) where any Customer terminates a Contract awarded to the Contractor under this Framework Agreement as a consequence of a material breach by the Contractor;
 - (c) any warranty given by the other party in clause 7 of this agreement is found to be untrue or misleading;
 - (d) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply;
 - (e) if the Customer discovers that the Contractor was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded;

- (f) the Contractor or its affiliates embarrass or bring the Authority into disrepute or diminish the public trust in them;
- (g) where a right to terminate described in the prevention of bribery clause 22 occurs;
- (h) the Contractor is in breach of any of its health safety and wellbeing obligations; or

17.2 the Contractor repeatedly breaches any of the terms of this Contract 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 this Contract. For the purposes of clause 17.1(a), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

- (a) a substantial portion of this agreement; or
 - (b) any of the material obligations set out in this agreement,
- over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

Termination on insolvency and Change of Control

17.3 Without affecting any other right or remedy available to it, the Authority may terminate this agreement with immediate effect by giving written notice to the Contractor if:

- (a) the Contractor 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 or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **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 section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Contractor with one or more other companies or the solvent reconstruction of the Contractor;
- (c) 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 the Contractor (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
- (d) 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 Contractor (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Contractor (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor;

- (g) the Contractor (being an individual) is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.3(a) to clause 17.3(h) (inclusive); or
- (j) the Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

17.4 The Contractor shall notify the Authority immediately if the Contractor undergoes a Change of Control, within the meaning of section 450 of the Corporation Tax Act 2010 (Change of Control). The Authority may terminate the Framework Agreement by giving notice in writing to the Contractor with immediate effect within six Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control;

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

Termination by Authority for convenience

17.5 The Authority shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving three months written notice to the Contractor. The Parties acknowledge that if the Authority exercises its rights under this clause 17.5 it shall exercise its equivalent rights under all agreements with the Framework Providers.

18. SUSPENSION OF CONTRACTOR'S APPOINTMENT

18.1 Without prejudice to the Authority's rights to terminate the Framework Agreement in clause 17 above, if a right to terminate this Framework Agreement arises in accordance with clause 17, the Authority may suspend, with immediate effect, the Contractor's right to receive Orders from Customers in any or all Contractor's Lots by giving notice in writing to the Contractor. If the Authority provides notice to the Contractor in accordance with this clause 18, the Contractor's appointment shall be suspended for the period set out in the notice or such other period notified to the Contractor by the Authority in writing from time to time.

18.2 Further to clause 18.1 above, in the event that the Authority suspends the Contractor's right to receive Orders, the Authority shall specify a reason for such suspension.

18.3 Whilst the Authority will endeavour to give the Contractor as much notice of a suspension as possible, certain circumstances may prevent such notice from being given and a suspension may take effect immediately from the date and time of notification to the Contractor.

- 18.4 Further to clause 18.3 above, notification to suspend the Contractor's right to receive Orders may be issued by the Authority verbally and followed up in writing as soon as reasonably practicable thereafter in which case, notification shall be deemed to be provided at the time it is verbally communicated to the Contractor.

19. CONSEQUENCES OF TERMINATION AND EXPIRY

- 19.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Contractor shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this clause 19.
- 19.2 Unless expressly stated to the contrary, the service of a notice to terminate the Framework Agreement shall not operate as a notice to terminate any Contract made under the Framework Agreement. Termination or expiry of the Framework Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 19.3 Within 30 Working Days of the date of termination or expiry of the Framework Agreement, the Contractor shall return or destroy at the request of the Authority any data, personal information relating to the Authority or its personnel or Confidential Information belonging to the Authority in the Contractor's possession, power or control, either in its then current format or in a format nominated by the Authority (in which event the Authority will reimburse the Contractor's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information for a period of up to 12 Months to comply with its obligations under the Framework Agreement, or such period as is necessary for such compliance.
- 19.4 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement before termination or expiry.
- 19.5 The provisions of clause 7, clause 10, clause 11, clause 12, clause 13, clause 14, clause 15, clause 19, clause 22, and clause 31 shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

20. COMPLAINTS HANDLING AND RESOLUTION

- 20.1 The Contractor shall notify the Authority of any Complaint made by Other Contracting Bodies within two Working Days of becoming aware of that Complaint and such notice shall contain full details of the Contractor's plans to resolve such Complaint.
- 20.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Framework Agreement or a Contract, and without prejudice to any obligation of the

Contractor to take remedial action under the provisions of the Framework Agreement or a Contract, the Contractor shall use its best endeavours to resolve the Complaint within ten Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

21. DISPUTE RESOLUTION

21.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Contract Manager of the Authority and Service Manager of the Contractor shall attempt in good faith to resolve the Dispute;
- (b) if the Contract Manager of The Authority and Service Manager of the Contractor are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Head of Contract Management of the Authority and the Director of the Contractor who shall attempt in good faith to resolve it; and
- (c) if the Head of Contract Management of the Authority and Director of the Contractor are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 20 days after the date of the ADR notice.

21.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under clause 31 which clause shall apply at all times.

21.3 If the Dispute is not resolved within 90 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 90 days, or the mediation terminates before the expiration of the said period of 90 days, the Dispute shall be finally resolved by the courts of England and Wales arbitration proceedings in accordance with clause 31 in this Agreement.

GENERAL PROVISIONS

22. PREVENTION OF BRIBERY

22.1 The Contractor:

- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Framework Agreement and any Contract made under it commit a Prohibited Act; and

- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that an agreement has been reached to that effect, in connection with the execution of this Framework Agreement, excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of this Framework Agreement.

22.2 The Contractor shall:

- (a) if requested, provide the Customer with any reasonable assistance, at the Customer's reasonable cost, to enable the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
- (b) within 30 Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing (such certification to be signed by an officer of the Contractor) compliance with this clause 22 by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Framework Agreement. The Contractor shall provide such supporting evidence of compliance as the Customer may reasonably request.

22.3 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Customer) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.

22.4 If any breach of clause 22.1 is suspected or known, the Contractor must notify the Customer immediately.

22.5 If the Contractor notifies the Customer that it suspects or knows that there may be a breach of clause 22, the Contractor must respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit books, records and any other relevant documents. This obligation shall continue for 6 years following the expiry or termination of this Framework Agreement.

22.6 The Customer may terminate this Framework Agreement by written notice with immediate effect if the Contractor, its Staff or Sub-Contractors (in all cases whether or not acting with the Contractor's knowledge) breaches clause 22.1. In determining whether to exercise the right of termination under this clause 22.6, the Customer shall give all due consideration, where appropriate, to action other than termination of this Framework Agreement unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, Sub-Contractor or Contractor not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting:

- (a) with the authority or with the actual knowledge of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be); or
- (b) in circumstances where any one or more of the directors of the Contractor ought reasonably to have had such knowledge.

- 22.7 Any notice of termination under clause 22.6 must specify:
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Customer believes has committed the Prohibited Act; and
 - (c) the date on which this Framework Agreement will terminate.
- 22.8 Despite clause 21, any dispute relating to:
- (a) the interpretation of this clause 22; or
 - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Customer and its decision shall be final and conclusive.
- 22.9 Any termination under this clause 22 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer.

23. SUBCONTRACTING AND ASSIGNMENT

- 23.1 Subject to clause 23.2 and clause 23.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Framework Agreement without the prior written consent of the other party, neither may the Contractor subcontract the whole or any part of its obligations under this Framework Agreement except with the express prior written consent of the Authority.
- 23.2 The Authority shall be entitled to novate the Framework Agreement to:
- (a) any Contracting Authority;
 - (b) any other body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Customer; or
 - (c) any private sector body which substantially performs the functions of the Customer,
- 23.3 Provided that the Authority has given prior written consent, the Contractor shall be entitled to novate the agreement where:
- (a) the specific change in contractor was provided for in the procurement process for the award of this agreement;
 - (b) there has been a universal or partial succession into the position of the Contractor, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

24. VARIATIONS TO FRAMEWORK AGREEMENT

Any variations to the Framework Agreement must be made only in accordance with the Framework Agreement Variation Procedure set out in **Error! Reference source not found..**

25. THIRD PARTY RIGHTS

- 25.1 Except as provided otherwise, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 25.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

26. SEVERANCE

- 26.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 26.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

27. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

28. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

29. ENTIRE AGREEMENT

- 29.1 This Framework Agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter, provided that nothing in this clause 29 shall operate to exclude any liability for fraud.
- 29.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this

Framework Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Framework Agreement.

30. NOTICES

30.1 Except as otherwise expressly provided within this Framework Agreement, no notice or other communication from one Party to the other shall have any validity under the Framework Agreement unless made in writing by or on behalf of the Party sending the communication.

30.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by e-mail (confirmed by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 30.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours, in the case of e-mail or sooner where the other Party acknowledges receipt of such letters, or e-mail.

30.3 For the purposes of clause 30.2, the address of each Party shall be:

(a) For the Authority:

Name: [REDACTED]

Address: APHA, Pavilion H1, County Hall, Spetchley Road, Worcester, WR5 2NP

Tel: 020 8225 8462

E-mail: contractmanagement@apha.gsi.gov.uk

For the Contractor:

Name:

Address:

Tel:

E-mail:

30.4 Either Party may change its address for service by serving a notice in accordance with this clause.

31. GOVERNING LAW AND JURISDICTION

31.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

- 31.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Framework Agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1 – Specification of Requirements and Lots

1. Specification of Requirements

1.1 The Specification of Requirements is attached within the e-Sourcing System contract record.

2. Contractor's Lots

2.2 The Contractor has been awarded the Lots as indicated in table 1 below:

Table 1. Contractor's Lots

Lot	Geographical Coverage (by County)	Awarded
Lot 1 Wales	All Counties.	
Lot 2 Northern England	Cleveland, Cheshire, Cumbria, Derbyshire, Durham, East Riding of Yorkshire, Greater Manchester, Lancashire, Lincolnshire, Merseyside, North Yorkshire, Nottinghamshire, Northumberland, Shropshire, South Yorkshire, Staffordshire, Tyne & Wear, West Yorkshire.	
Lot 3 South & Eastern England	Oxfordshire, Warwickshire, Northamptonshire, Leicestershire, Rutland, West Midlands, Bedfordshire, Berkshire, Buckinghamshire, Cambridgeshire, Essex, Hampshire, Isle of Wight, Hertfordshire, Kent, Greater London, Norfolk, Suffolk, Surrey, East Sussex, West Sussex.	
Lot 4 Western England	Avon, Dorset, Gloucestershire, Herefordshire, Somerset, Wiltshire, Worcestershire.	
Lot 5 Devon & Cornwall	Cornwall, Devonshire, Isles of Scilly.	
Lot 6 Scotland	All Counties.	

Schedule 2 – Pricing Matrices

1. CONTRACTOR FEES

- 1.1 The fees payable by the Authority to the Contractor for the delivery of Services shall be known as the **Contractor Fees**.
- 1.2 The Contractor Fees shall be made up of a **Haulage Rate** (see Section 2), and a **Slaughter Rate** (see Section 3 below).
- 1.3 A **Disposal Rate** (see Section 4 below), determined by the Authority as described below, will be payable to the Contractor in addition to the Haulage Rate and Slaughter Rate for any animals or parts of animals condemned as unfit for human consumption.

Table 2. Contractor Fees

COMPONENT OF CONTRACTOR FEE	RELEVANT LOT(s)	RATE (£)
Haulage Rate A (per loaded mile, for transportation of 1 – 5 animals)	Lots 1 – 6 inclusive	██████████ ██████████
Haulage Rate B (per loaded mile, for transportation of 6 – 19 animals)	Lots 1 – 6 inclusive	██████████ ██████████
Haulage Rate C (per loaded mile, for transportation of 20 – 30 animals)	Lots 1 – 6 inclusive	██████████ ██████████
Haulage Rate D (per loaded mile, for transportation of 31 or more animals)	Lots 1 – 6 inclusive	██████████ ██████████
Slaughter Rate (per animal)	Lots 1 – 6 inclusive	██████████ ██████████

2 HAULAGE RATE

- 2.1 The cost of transporting animals shall be an all-inclusive Haulage Rate, including but not limited to the costs of the driver, driver's mate, all fuels, tolls, ferries and vehicle servicing costs as appropriate.
- 2.2 The Authority will not accept any additional charges associated with the transportation of animals that are not included in the tendered Haulage Rate, apart from where ferry travel is needed to pick-up reactors, where the Authority will reimburse the Contractor for 50% of the cost of the ferry.
- 2.3 The Contractor shall endeavour to travel via the lowest cost sailings available for that day. Copies of receipts should be included with any invoices for the amount being charged.

- 2.4 The Haulage Rate shall be for **a rate per loaded mile**, i.e. the journey from the Notified Premises to the Slaughterhouse, and for the following numbers of animals:
- a) Haulage Rate A - 1 to 5 animals;
 - b) Haulage Rate B - 6 to 19 animals;
 - c) Haulage Rate C - 20 to 30 animals;
 - d) Haulage Rate D - 31 animals or more.
- 2.5 For the avoidance of doubt, if the Contractor sub-contracts any haulage activity, the location of the Contractor's Slaughterhouse will be used in the calculation of all mileage. Any additional mileage between the Contractor's premises and those of the Sub-contractor shall not be chargeable to the Authority.
- 2.6 Pick-ups from multiple Notified Premises on the same journey are permitted as part of this Framework, provided the Authority's removal dates are met and only reactor animals are removed.
- 2.7 Where multiple pick-ups of animals occur, the Haulage Rate shall be based on the total number of reactor animals carried after the final collection. Payment made by the Authority shall be for the journey from the first Notified Premises via other Notified Premises to the Slaughterhouse.
- 2.8 The Contractor shall endeavour to carry out multiple pick-ups using the lowest practical mileage, in order to meet the condition under Article 3 of EC Regulation 1/2005, 'all necessary arrangements have been made in advance to minimise the length of the journey and meet animals' needs during the journey'.
- 2.9 Where restricted access to Notified Premises on which animals are located results in a number of smaller vehicles being required for the same pick up, the Contractor shall seek written approval from the Authority for multiple Haulage Rates to be chargeable for each vehicle used. An email may constitute written approval.
- 2.10 If the Contractor uses multiple vehicles for collection of animals for their own convenience, the Authority will not be liable to pay multiple Haulage Rates. Only orders for which there is a recognisable need for multiple vehicles to be used will be granted the Authority's approval for multiple Haulage Rates to be chargeable.
- 2.11 In the event of animals not being fit for collection for any reason (as described in Section 3 of the Statement of Requirement), and provided that the reason is outside of the Contractor's direct control, the Authority agrees to pay the Haulage Rate for any wasted mileage as if it were loaded miles. As described in Section 4 of the Statement of Requirement), the Authority should be notified immediately if practical, or if not, within the same Working Day, of any animals that are not successfully collected for any reason.

- 2.12 The Contractor shall be entitled to propose a variation to the Haulage Rate annually, to take effect on each anniversary of commencement of the contract for the duration of this Framework Agreement. Any proposed variation to the Haulage Rate should be submitted, in writing, and with appropriate justification to support the proposal, to the Authority's Contract Manager at least two (2) calendar months before the variation is proposed to take effect.
- 2.13 The Authority reserves the right to refuse the proposed variation if appropriate justification, at the sole discretion of the Authority, is not provided, or if it exceeds the average rate of inflation as measured by the CPI over each complete month of the current financial year. The exception to this is where a Contractor has lowered the Haulage Rate during a previous price review, they may then increase these rates at a subsequent price review by any level up to their highest level that has been previously agreed with the Authority.
- 2.14 The Authority reserves the right to propose a variation to the Haulage Rate annually, to take effect on each anniversary of the commencement of the contract for the duration of this Framework Agreement. Any proposed variation to the Haulage Rate should be submitted, in writing, and with appropriate justification to support the proposal, to the Contractor's Service Manager at least two (2) calendar months before the variation is proposed to take effect.

3 SLAUGHTER RATE

- 3.1 The price for all costs associated with the slaughter of animals at the Contractor's Slaughterhouse shall be known as the Slaughter Rate, including all costs associated therewith, provision of all facilities, disposal of normal waste from slaughter, and all associated administrative costs.
- 3.2 The Authority will not accept any additional charges associated with the slaughter of animals that are not included in the tendered Slaughter Rate.
- 3.3 The Slaughter Rate is a rate per animal slaughtered.
- 3.4 The Contractor shall be entitled to propose a variation to the Slaughter Rate annually, to take effect on each anniversary of commencement of the contract for the duration of this Framework Agreement. Any proposed variation to the Slaughter Rate should be submitted, in writing, and with appropriate justification to support the proposal, to the Authority's Contract Manager at least two (2) calendar months before the variation is proposed to take effect.
- 3.5 The Authority reserves the right to refuse the proposed variation if appropriate justification is not provided, or if it exceeds the average rate of inflation as measured by the CPI over each complete month of the current financial year. The exception to this is where the Contractor has lowered the Slaughter Rate during a previous price review, they may then increase these rates at a subsequent price review by any level up to their highest level that has been previously agreed with the Authority.
- 3.6 The Authority reserves the right to propose a variation to the Slaughter Rate

annually, to take effect on each anniversary of the commencement of the contract for the duration of this Framework Agreement. Any proposed variation to the Slaughter Rate should be submitted, in writing, and with appropriate justification to support the proposal, to the Contractor's Service Manager at least two (2) calendar months before the variation is proposed to take effect.

4 DISPOSAL RATE

- 4.1 The price for incineration or rendering of animals or parts of animals condemned as unfit for human consumption for whatever reason shall be known as the Disposal Rate, including all transport and all associated administrative costs.
- 4.2 The Disposal Rate is payable in addition to the total Haulage Rate and Slaughter Rate for a given Order, as required.
- 4.3 The Disposal Rate will be £0.15 per Kg.
- 4.4 The Disposal Rate applies to total or partial condemnation only; normal waste from slaughter is to be included as part of the Slaughter Rate described above.
- 4.5 The Authority reserves the right to propose a variation to the Disposal Rate, to take effect on each anniversary of the commencement of the contract for the duration of this Framework Agreement. Any proposed variation should be submitted, in writing, and with appropriate justification to support the proposal, to the Contractor's Service Manager at least two (2) calendar months before the variation is proposed to take effect.

5 SALVAGE RATE

- 5.1 When any carcase or part of any carcase is permitted to enter the food chain, the Contractor shall pay the Salvage Rate to the Authority dependent on the category of the carcase, as detailed in Table 1 below.
- 5.2 Salvage returned to the Authority should be calculated by taking the percentage rate from Table 1 and applying this to the Overall GB Weekly prices as specified by AHDB Meat Services for the week immediately prior to that in which the animal is slaughtered.

This information is available on the AHDB website:

<https://ahdb.org.uk/beef/gb-deadweight-cattle-prices-by-region>

- 5.3 For rates (v) and (vi) in Table 1 below, the Salvage Rate should be calculated by applying the percentage stated against the AHDB All Cows price as these categories do not have their own published prices. All other rates should use the matching AHDB published prices.
- 5.4 For rate (vii) Pigs, in Table 1 below, the Salvage Rate should be calculated by applying the percentage stated against the AHDB Standard Pig Price (SPP)

and the relevant dressing specification used. This information is available on the AHDB website: <https://ahdb.org.uk/pork/pork-markets>

- 5.5 For rate (viii) Ovine, in Table 1 below, the Salvage Rate should be calculated by applying the percentage stated against the AHDB Standard Quality Quotation (SQQ) Overall Price. This information is available on the AHDB website: <https://ahdb.org.uk/qb-deadweight-sheep-prices>.

Table 3. Salvage Rates

Ref.	Species	UK
(i)	Bovine	All Steers (animals aged 24-30 months)
(ii)		Heifers (animals aged 24-30 months)
(iii)		Young Bulls (animals aged 18-24 months)
(iv)		All Cows
(v)		Calves (under 6 months)
(vi)		All other bovine
(vii)	Non-Bovine	Pigs
(viii)		Ovine
(ix)		All Other species

- 5.6 The Contractor shall submit a consolidated invoice, in arrears, for Orders completed each Working Week (usually Monday to Friday), including any Orders completed by the Contractor directly or those completed by its Sub-Contractors.
- 5.7 In addition to the weekly totals for the Invoice as a whole, the Contractor shall provide a **daily** summary of:
- Total Haulage Rate
 - Total Slaughter Rate
 - Total Disposal Rate (if applicable)
 - Total Salvage Rate to be returned to the Authority
- 5.8 Invoices shall be supported by evidence in a suitable format that clearly identifies, for each Order including but not limited to:

- a) Date and time of receipt of the Order from the Authority;
- b) Total number of animals collected;
- c) Date the animals were collected;
- d) Date the animals were slaughtered;
- e) Total Slaughter Rate for the Order;
- f) Whether the carcass was condemned or partially condemned, and the reason for this;
- g) Total Disposal Rate for the Order (if applicable);
- h) The AHDB carcass classification for each animal;
- i) The actual recorded weight and gross Salvage Value return to the Authority for each animal;
- j) Total Salvage Rate for the Order;
- k) The official animal identification number for each animal;
- l) Total mileage (distance) associated with the Order;
- m) Total Haulage Rate for the Order.

5.9 The Contractor shall ensure that all invoices and their accompanying salvage payments are submitted by BACS, or cheque if not available, to the Authority within thirty (30) calendar days of the completed week of slaughter.

Schedule 3 – Order Form

The TB161 Order Form is attached within the e-Sourcing System contract record.

Schedule 4 - Call-Off Terms and Conditions

The Call-Off Terms and Conditions are attached within the e-Sourcing System contract record.

Schedule 5 – Framework Agreement Variation Procedure

1. INTRODUCTION

- 1.1 Schedule 8 details the scope of the variations permitted and the process to be followed where the Authority proposes a variation to the Framework Agreement.
- 1.2 The Authority may propose a variation to the Framework Agreement under Schedule 8 only where the variation does not amount to a material change in the Framework Agreement or the Services.

2. PROCEDURE FOR PROPOSING A VARIATION

- 2.1 Except where paragraph 5 applies, the Authority may propose a variation using the procedure contained in this paragraph 2.
- 2.2 In order to propose a variation, the Authority shall serve each Framework Provider with written notice of the proposal to vary the Framework Agreement (**Schedule 9: Contract Change Notice**).
- 2.3 The Contract Change Notice shall:
 - (a) contain details of the proposed variation providing sufficient information to allow each Framework Provider to assess the variation and consider whether any changes to the prices set out in its Pricing Matrices are necessary; and
 - (b) require each Framework Provider to notify the Authority within 10 days of any proposed changes to the prices set out in its Pricing Matrices.
- 2.4 On receipt of the Contract Change Notice, each Framework Provider has 20 Working Days to respond in writing with any objections to the variation.
- 2.5 Where the Authority does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Authority may then serve each Framework Provider with a written agreement detailing the variation to be signed and returned by each Framework Provider within 10 days of receipt. Execution of a Variation is made via electronic signature.
- 2.6 On receipt of a signed agreement from each Framework Provider, the Authority shall notify all Framework Providers in writing of the commencement date of the variation.

3. OBJECTIONS TO A VARIATION

In the event that the Authority receives one or more written objections to a variation, the Authority may:

- (a) withdraw the proposed variation; or
- (b) propose an amendment to the variation.

4. CHANGES TO THE PRICING MATRICES

4.1 Where a Framework Provider can demonstrate that a variation would result in a change to the prices set out in its Pricing Matrices, the Authority may require further evidence from the Framework Provider that any additional costs to the Framework Provider will be kept to a minimum.

4.2 The Authority may require the Framework Provider to meet and discuss any proposed changes to the Pricing Matrices that would result from a variation.

4.3 Where a change to a Framework Provider's Pricing Matrices is agreed by the Authority, the Authority shall notify its acceptance of the change to the Framework Provider in writing.

4.4 In the event that the Authority and the Framework Provider cannot agree to the changes to the Pricing Matrices, the Authority may:

- (a) withdraw the variation; or
- (b) propose an amendment to the variation.

5. VARIATIONS THAT ARE NOT PERMITTED

In addition to the provisions contained in paragraph 1.2, the Authority may not propose any variation that:

- (a) may prevent one or more of the Framework Providers from performing its obligations under the Framework Agreement; or
- (b) is in contravention of any Law.