



Department  
for Environment  
Food & Rural Affairs

# Conditions of Contract (Services)

**Project 28709: Provision of Post Mortem Examination services for the purpose of surveillance of farm animals**

**December 2020**

# SECTION 1

## FORM OF CONTRACT

### **PARTIES:**

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

### **AND**

- (2) The University of Surrey (registered in England and Wales under number RC000671) whose registered office is situated at Veterinary Pathology Centre, University of Surrey, Guildford, Surrey, GU2 7AQ (the “**Provider**”)

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

### **WHEREAS**

The Authority wishes to appoint the Provider to provide certain services and goods and the Provider agrees to provide those services and goods in accordance with these terms and conditions.

### **NOW IT IS HEREBY AGREED as follows:**

#### **1. TERMS OF CONTRACT**

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

Section 1: Form of Contract  
Section 2: Terms and Conditions

Schedule 1: Specification  
Schedule 2: Prices  
Schedule 3: Change Control  
Schedule 4: Commercially Sensitive Information (not used)  
Schedule 5: Processing, Personal Data and Data Subjects

Schedule 6: Non-Disclosure Agreement (not used)  
Schedule 7: Provider and Third Party Software (not used)  
Schedule 8: Security Requirements, Policy and Plan (not used)  
Schedule 9: Business Continuity and Disaster Recovery

1.2 Execution of the Contract is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Contract is formed on the date on which both

Parties communicate acceptance of its terms on the Authority's electronic contract management system ("**Bravo**").

- 1.3 The Contract starts on 01/01/2021 (the "**Commencement Date**") and ends on 31/12/2023 (the "**End Date**") unless it is terminated early or extended in accordance with the Contract.
- 1.4 The Authority may extend the term of the Contract until 31/12/2025 ("Extension"). The terms of the Contract will apply throughout the period of any Extension.

# SECTION 2

## TERMS AND CONDITIONS

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# A GENERAL PROVISIONS

## A1 Definitions and Interpretation

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

“ABP” means Animal-by-Products.

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

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

“Animal(s)” means species listed in paragraph 2.2 of the Specification (Schedule 1).

“APHA” means the Animal and Plant Health Agency, an Executive Agency of Defra. Management of contracts resulting from this procurement will be delegated to APHA.

“APHA Species Expert” means Veterinary or Scientist with recognised expertise in a specific livestock species.

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

“Assigned Area” means carcass collection delivery. The geographical areas will be assigned to a Provider by APHA.

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

“Authority Data” means:

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

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

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

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

“Authority System” means the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the

Provider in connection with the Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Provider System or which is necessary for the Authority to receive the Services.

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

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

“Carcase” means Animal for Post Mortem Examination (PME).

“Carcase Collector” means providers contracted by APHA to collect carcasses.

“Carcase Collection Selector Tool” means software provided by APHA to determine the relevant Carcase Collector for a collection.

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

“CITES” means means Convention on International Trade in Endangered Species.

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

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

- (a) the Price;
- (b) details of the Provider’s Intellectual Property Rights; and
- (c) the Provider’s business and investment plans

which the Provider has indicated to the Authority that, if disclosed by the Authority, would cause the Provider significant commercial disadvantage or material financial loss.

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

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

“Contract” has the meaning given in paragraph 1.1 of the Form of Contract.

“Contract Period” means the period from the Commencement Date to:

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

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

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

“Provider Software” means software which is proprietary to the Provider, including software which is or will be used by the Provider for the purposes of providing the Services and which is set out in Schedule 7.

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

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

“Controller” has the meaning given in the GDPR.

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

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

“Data Capture Tool” means the Authority Software provided by APHA to capture the data from the surveillance activities.

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

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

“Data Protection Legislation” means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 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 in the GDPR.

“Data Subject” has the meaning given in the GDPR.

“Data Subject Request” means 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.

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

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

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

“DPA 2018” means the Data Protection Act 2018.

“ECVP” means European College of Veterinary Pathologists.

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

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

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

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

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

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

disaster but excluding any industrial dispute relating to the Provider or the Staff or any other failure in the Provider's supply chain.

"Form of Contract" means Section 1 of the Contract.

"FRCPath" means Fellow of the Royal College of Pathologists.

"GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679).

"General Anti-Abuse Rule" means:

(a) the legislation in Part 5 of the Finance Act 2013; and

(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs;

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

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

"HMRC" means HM Revenue & Customs.

"ICT Environment" means the Authority System and the Provider System.

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

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

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

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

"Keeper" means person responsible for the applicable animal Carcase.

"Key Personnel" mean those persons named in the Specification as key personnel.

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

"KPIs" means the Key Performance Indicators set out in Appendix C (Service Levels and Key Performance Indicators).

“Law” means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, 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 relevant Party is bound to comply.

“LED” means Law Enforcement Directive (Directive (EU) 2016/680).

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

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

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

“Month” means calendar month.

“NICs” means National Insurance Contributions.

“NRT” means new or re-emerging disease threats.

“Occasion of Tax Non-Compliance” means:

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

“Outbreaks” means a sudden increase in occurrences of a disease in a particular time and place.

“Out-Codes” means the first part of a UK postcode.

“Personal Data” has the meaning given in the GDPR.

“Personal Data Breach” has the meaning given in the GDPR.

“PME” means post-mortem examination.

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

“Price” means the price (excluding any applicable VAT) payable to the Provider by the Authority under the Contract, as set out in Schedule 2 for the full and proper performance by the Provider of its obligations under the Contract.

“Processor” has the meaning given in the GDPR.

“Prohibited Act” means:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:

- i) induce that person to perform improperly a relevant function or activity; or
- ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;

(c) an offence:

- i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;
- ii) under legislation or common law concerning fraudulent acts; or
- iii) the defrauding, attempting to defraud or conspiring to defraud the Authority;

(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

“Protective Measures” means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule 8.

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

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

“PVS” means Private Veterinary Surgeon(s).

“Qualifying PME” means a PME that is of surveillance value when judged against the criteria in Section 3.2 of the Specification. Only Qualifying PMEs will be paid for by APHA.

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

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

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

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

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

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

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

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

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

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

- a) prepared by or for the Provider for use in relation to the performance of its obligations under the Contract; or
- b) the result of any work done by the Provider, the Staff or any Sub-Provider in relation to the provision of the Services.

“Returning Employees” means those persons agreed by the Parties to be employed by the Provider (and/or any Sub-Provider) wholly or mainly in the supply of the Services immediately before the end of the Contract Period.

“Salmonella” means any various rod-shaped bacteria of the genus Salmonella, many of which are pathogenic, causing infectious diseases in domestic animals, with many zoonotic strains.

“Schmallenburg virus” means an orthobunya virus that causes birth defects in sheep and other Farm Animals.

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

“SEG Lead” means APHA Species Expert Group Lead.

“Service Levels” means the service levels set out in Appendix C to the Specification (Service Levels and Service Credits).

“Services” means the services set out in Schedule 1 including any modified or alternative services.

“SIU” means APHA’s Surveillance Intelligence Unit.

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

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

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

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

“Sub-processor” means any third party appointed to process Personal Data on behalf of the Provider related to this Contract.

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

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

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

“Third Party Software” means software which is proprietary to any third party which is or will be used by the Provider to provide the Services including the software and which is specified as such in Schedule 7.

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

“TSE” means Transmissible Spongiform Encephalopathy - a group of progressive conditions (encephalopathies) that affect the nervous system of many animals, including humans.

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

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

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

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

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

“Veterinary Staff” means qualified Veterinary Surgeon(s) with a degree in Veterinary science or Veterinary medicine, current registration with the Royal College of Veterinary Surgeons and experience in farm animal disease investigations and pathology.

“VIDA” means the Veterinary Investigation Diagnosis Analysis database.

“VIO” means Veterinary Investigation Officer.

“Working Day” means any day other than a weekend or Bank Holiday in England and Wales.

“Working Week” means Monday to Friday, excluding Public Holidays.

In the Contract, unless the context implies otherwise:

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

(h) references to the Contract are references to the Contract as amended from time to time.

## **A2 The Authority's Obligations**

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

## **A3 Provider's Status**

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

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

## **A4 Notices and Communications**

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

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

(a) in a letter is deemed to have been received 2 Working Days after the day it was sent; and

(b) in an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day

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

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

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

(a) For the Authority:

Contact Name: [REDACTED]

Address: [REDACTED]

Email: [REDACTED]

(b) For the Provider:

Contact Name: [REDACTED]  
[REDACTED]

Address: [REDACTED]  
[REDACTED]

Telephone: [REDACTED]

## **A5 Mistakes in Information**

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

## **A6 Conflicts of Interest**

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

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

# **B. THE SERVICES**

## **B1 Specification**

B1.1 In consideration of the Provider supplying the Services the Provider shall be paid the Price.

## **B2 Provision and Removal of Equipment**

B2.1 The Provider shall provide all the Equipment and resource necessary for the supply of the Services.

B2.2 The Provider shall not deliver any Equipment to nor begin any work on the Premises without obtaining Approval.

B2.3 All Equipment brought onto the Premises shall be at the Provider's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Provider is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Provider shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.

B2.4 Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Provider.

B2.5 If the cost of any Equipment is reimbursed to the Provider such Equipment shall be the property of the Authority and shall on request be delivered to the Authority as directed by the Authority. The Provider will keep a full and accurate inventory of such Equipment and will deliver that inventory to the Authority on request and on completion of the Services.

B2.6 The Provider shall maintain all Equipment in a safe, serviceable and clean condition.

B2.7 The Provider shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:

- (a) remove immediately from the Premises Equipment which is, in the Authority's opinion, hazardous, noxious or not supplied in accordance with the Contract; and
- (b) replace such item with a suitable substitute item of Equipment.

B2.8 Within 20 Working Days following the end of the Contract Period, the Provider shall remove the Equipment together with any other materials used by the Provider to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Provider shall make good any damage to those Premises and any fixtures and fitting in the Premises which is caused by the Provider or Staff.

### **B3 Delivery**

B3.1 The Provider shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Service has not been specified in the Contract, the Provider shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Provider shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

B3.2 The Provider shall ensure that all Staff supplying the Services do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services. The Provider shall ensure that those Staff are properly managed and supervised.

B3.3 If the Specification includes installation of equipment the Provider shall notify the Authority in writing when it has completed installation. Following receipt of such notice, the Authority shall inspect the installation and shall, by giving notice to the Provider:

- (a) accept the installation; or
- (b) reject the installation and inform the Provider why, in the Authority's reasonable opinion, the installation does not satisfy the Specification.

B3.4 If the Authority rejects the installation pursuant to clause B10.3(b), the Provider shall immediately rectify or remedy any defects and if, in the Authority's reasonable opinion, the installation does not, within 2 Working Days or such other period agreed by the Parties, satisfy the Specification, the Authority may terminate the Contract with immediate effect by notice.

B3.5 The installation shall be complete when the Provider receives a notice issued by the Authority in accordance with clause B10.3(a). Notwithstanding acceptance of any installation in accordance with clause B10.3(a), the Provider shall remain solely responsible for ensuring that the Services and the installation conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the installation.

B3.6 During the Contract Period, the Provider shall:

- (a) at all times have all licences, approvals and consents necessary to enable the Provider and Staff to carry out the installation;
- (b) provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the installation; and
- (c) not, in delivering the Services, in any manner endanger the safety or convenience of the public.

## **B4 Key Personnel**

B4.1 The Provider acknowledges that the Key Personnel are essential to the proper provision of the Services.

B4.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar extenuating circumstances.

B4.3 Any replacements to the Key Personnel shall be subject to Approval. Such replacements shall be of at least equal status, experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

B4.4 The Authority shall not unreasonably withhold its agreement under clauses B11.2 or B11.3. Such agreement shall be conditional on appropriate arrangements being made by the Provider to minimise any adverse effect on the Services which could be caused by a change in Key Personnel.

B4.5 The Authority may, by notice to the Provider, ask it to remove any Staff whose presence is, in the Authority's reasonable opinion, undesirable. The Provider shall comply with any such request immediately.

## **B5 Provider's Staff**

B5.1 The Authority may, by notice to the Provider, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:

- (a) any member of the Staff; or
- (b) any person employed or engaged by any member of the Staff,

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

B5.2 At the Authority's written request, the Provider shall provide a list of the names and addresses of all persons who may require admission in to the Authority's Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

B5.3 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Provider has failed to comply with clause B5.2 shall be final.

B5.4 The Provider shall ensure that all Staff who have access to the Authority's Premises, the Authority System or the Authority Data have been cleared in accordance with the BPSS.

## **B6 Inspection of Premises**

B6.1 Save as the Authority may otherwise direct, the Provider is deemed to have inspected the Premises before submitting its Tender and to have complete due diligence in relation to all matters connected with the performance of its obligations under the Contract.

## **B7 Licence to Occupy Premises**

B7.1 Any land or Premises made available from time to time to the Provider by the Authority in connection with the Contract shall be on a non-exclusive licence basis free of charge and shall be used by the Provider solely for the purpose of performing its obligations under the Contract. The Provider shall have the use of such land or Premises as licensee and shall vacate the same on termination of the Contract.

B7.2 The Provider shall limit access to the land or Premises to such Staff as is necessary for it to perform its obligations under the Contract and the Provider shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.

B7.3 Should the Provider require modifications to the Authority's Premises, such modifications shall be subject to Approval and shall be carried out by the Authority at the Provider's expense. The Authority shall undertake approved modification work without undue delay.

B7.4 The Provider shall (and shall ensure that any Staff on the Authority's Premises shall) observe and comply with such rules, regulations and requirements (including those

relating to security arrangements) as may be in force from time to time for the conduct of personnel when on the Authority's Premises as determined by the Authority.

B7.5 The Contract does not create a tenancy of any nature whatsoever in favour of the Provider or its Staff and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use the Premises owned or occupied by it in any manner it sees fit.

## **B8 Property**

B8.1 All Property is and shall remain the property of the Authority and the Provider irrevocably licenses the Authority and its agents to enter any Premises of the Provider during normal business hours on reasonable notice to recover any such Property. The Provider shall not in any circumstances have a lien or any other interest on the Property and the Provider shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Provider shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Providers and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.

B8.2 The Property shall be deemed to be in good condition when received by or on behalf of the Provider unless the Provider notifies the Authority otherwise within 5 Working Days of receipt.

B8.3 The Provider shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without Approval.

B8.4 The Provider shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements as required from time to time.

B8.5 The Provider shall be liable for all loss of or damage to the Property, unless such loss or damage was caused by the Authority's negligence. The Provider shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

## **B9 Offers of Employment**

B9.1 Except in respect of any transfer of Staff under TUPE, for the Contract Period and for 12 Months thereafter the Provider shall not employ or offer employment to any of the Authority's staff who have been associated with the Services and/or the Contract without Approval.

## **B10 Employment Provisions**

B10.1 Not later than 12 Months prior to the end of the Contract Period, the Provider shall fully and accurately disclose to the Authority all information that the Authority may reasonably request in relation to the Staff including the following:

(a) the total number of Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law;

(b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause B10.1 (a);

(c) the terms and conditions of employment/engagement of the Staff referred to in clause B10.1 (a), their job titles and qualifications;

(d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and

(e) details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

B10.2 At intervals determined by the Authority (which shall not be more frequent than once every 30 days) the Provider shall give the Authority updated TUPE Information.

B10.3 Each time the Provider supplies TUPE Information to the Authority it shall warrant its completeness and accuracy and the Authority may assign the benefit of this warranty to any Replacement Provider.

B10.4 The Authority may use TUPE Information it receives from the Provider for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Provider shall provide the Replacement Provider with such assistance as it shall reasonably request.

B10.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Provider shall indemnify and keep indemnified the Authority, the Crown and any Replacement Provider against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown or any Replacement Provider may suffer or incur as a result of or in connection with:

(a) the provision of TUPE Information;

(b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Provider or any Sub-Provider in respect of any Returning Employee on or before the end of the Contract Period;

(c) any failure by the Provider or any Sub-Provider to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Authority or a Replacement Provider to comply with its duties under regulation 13 of TUPE;

(d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Provider or any Sub-Provider to comply with any legal obligation to such trade union, body or person; and

(e) any claim by any person who is transferred by the Provider to the Authority and/or a Replacement Provider whose name is not included in the list of Returning Employees.

B10.6 If the Provider becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall notify the Authority and provide the Authority with up to date TUPE Information.

B10.7 This clause B10 applies during the Contract Period and indefinitely thereafter.

B10.8 The Provider undertakes to the Authority that, during the 12 Months prior to the end of the Contract Period the Provider shall not (and shall procure that any Sub-Provider shall not) without Approval (such Approval not to be unreasonably withheld or delayed):

(a) amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the Provider and the Staff in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);

(b) terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);

(c) transfer away, remove, reduce or vary the involvement of any other Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse impact upon the delivery of the Services by the Provider, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or

(d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

## **C PAYMENT**

### **C1 Price**

C1.1 In consideration of the Provider's performance of its obligations under the Contract, the Authority shall pay the Price in accordance with clause C2.

### **C2 Payment and VAT**

C2.1 The Provider shall submit invoices to the Authority on the dates set out in Schedule 2.

C2.2 The Authority shall, in addition to the Price and following Receipt of a Valid Invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

C2.3 The Provider shall add VAT to the Price at the prevailing rate as applicable and shall show the amount of VAT payable separately on all invoices as an extra charge. If the Provider fails to show VAT on an invoice, the Authority will not, at any later date, be liable to pay the Provider any additional VAT.

C2.4 All Provider invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.

C2.5 Valid Invoices shall include:

- (a) the Provider's full name, address and title of the Contract;
- (b) the Purchase Order number

and, if requested by the Authority:

- (c) timesheets for Staff engaged in providing the Services signed and dated by the Authority's representative on the Premises on the day;
- (d) the name of the individuals to whom the timesheet relates and hourly rates for each;
- (e) identification of which individuals are Provider's staff and which are Sub-Providers;
- (f) the address of the Premises and the date on which work was undertaken;
- (g) the time spent working on the Premises by the individuals concerned;
- (h) details of the type of work undertaken by the individuals concerned;
- (i) details of plant or materials operated and on standby;
- (j) separate identification of time spent travelling and/or meal or rest breaks; and
- (k) where appropriate, details of journeys made and distances travelled.

C2.6 The Authority shall not pay Provider time spent on meal or rest breaks and the Provider shall ensure that all workers take adequate meal or rest breaks.

C2.7 The Authority shall not pay for plant which is not in use during a meal or rest break.

C2.8 Meal and rest breaks will include breaks both in or outside an individual's workplace along with any time taken in travelling to or from the break location and/or any facilities for cleaning/changing/washing in preparation for or return from a meal or rest break.

C2.9 Timesheets must include a minimum of 30 minutes break for each shift of 8 hours, a minimum of 45 minutes break in a shift of between 8 and 12 hours and a minimum of one hour break will be taken within a shift in excess of 12 hours and the Provider's rates and Contract Price must include such breaks.

C2.10 The Authority shall not pay the Provider's overhead costs unless specifically agreed in writing by the Authority and overhead costs shall include, without limitation; facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Services.

C2.11 If Schedule 2 expressly provides that the Authority may be charged for plant which is on standby then in circumstances where plant was waiting to be transferred between

Premises or where the Authority has instructed that the plant is retained on the Premises then a standby charge of 60% of agreed rates may be made in respect of such relevant periods if supported by timesheets.

C2.12 The Authority shall pay only for the time spent by Staff working on the Premises.

C2.13 The Authority shall not pay a stand-by rate if plant is on standby because no work was being carried out on the Premises at that time or no operator or other relevant staff were available (unless the standby is because the Provider is awaiting licensing of the Premises on the Authority's instructions).

C2.14 The Authority shall not pay for plant or equipment which is stood down during any notice period pursuant to clauses H1, H2 and/or H3 and the Provider shall mitigate such costs as far as is reasonably possible, for example, by reutilising Staff, plant, materials and services on other contracts.

C2.15 The Provider may claim expenses only if they are clearly identified, supported by original receipts and Approved.

C2.16 If the Authority pays the Provider prior to the submission of a Valid Invoice this payment shall be on account of and deductible from the next payment to be made.

C2.17 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Authority may recover this payment against future invoices raised or directly from the Provider. All payments made by the Authority to the Provider shall be on an interim basis pending final resolution of an account with the Provider in accordance with the terms of this clause C2.

C2.18 The Authority shall pay all sums due to the Provider within 30 days of Receipt of a Valid Invoice. Valid Invoices should be submitted for payment to the following address: Accounts-Payable.aph@sscl.gov.uk (the Authority's preferred option); or SSCL AP, Defra, PO Box 790, Newport Gwent, NP10 8FZ.

C2.19 If a payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Provider interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

C2.20 The Provider shall ensure that a provision is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Providers within 30 days from the receipt of a valid invoice.

C2.21 The Provider shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Contract. Any amounts due under this clause C2.21 shall be paid by the Provider to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.

C2.22 The Provider shall not suspend the Services unless the Provider is entitled to terminate the Contract under clause H2.3 for failure to pay undisputed sums of money.

C2.23 The Authority shall not pay an invoice which is not Valid Invoice.

### **C3 Recovery of Sums Due**

C3.1 If under the Contract any sum of money is recoverable from or payable by the Provider to the Authority (including any sum which the Provider is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider from the Authority under the Contract or under any other agreement with the Authority or the Crown.

C3.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C3.3 The Provider shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Provider.

C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

### **C4 Price during Extension**

C4.1 Subject to Schedule 2 and clause F6, the Price shall apply for the Initial Contract Period and until the end date of any Extension or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

## **D. STATUTORY OBLIGATIONS**

### **D1 Prevention of Fraud and Bribery**

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

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

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

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

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

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

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

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

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

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

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

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

## **D2 Discrimination**

D2.1 The Provider shall:

- (a) perform its obligations under the Contract in accordance with:
  - i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);

- ii) the Authority's equality and diversity policy as given to the Provider from time to time;
  - iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- (b) take all necessary steps and inform the Authority of the steps taken to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

### **D3 Rights of Third Parties**

D3.1 The provisions of clauses B10.5 and E8.3 confer benefits on persons named in such provisions (together "Third Party Provisions") other than the Parties (each person a "Third Party Beneficiary") and are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 ("CRTPA").

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

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

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

### **D4 Health and Safety**

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

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

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

### **D5 Environmental Requirements**

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

- (a) conserve energy, water, wood, paper and other resources and reduce waste;
- (b) phase out the use of ozone depleting substances;

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

D5.2 The Provider shall ensure that any equipment and materials used in the provision of the Services do not contain:

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

unless given written permission by the Authority to do so.

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

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

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

D5.6 The Provider shall:

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

and support systems in place in order to minimise any disruption to the supply of the Services.

## **D6 Timber and Wood Derived Products**

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

(a) “Timber” means any product that contains wood or wood fibre, with the exception of "recycled" materials (see below). Such products range from solid wood to those where the manufacturing processes obscure the wood element, for example, paper. Timber and wood-derived products supplied or used in performance of the Services that have been recycled or reclaimed are referred to as "recycled" timber, which is defined below. Timber and wood-derived products supplied or used in performance of the Services that are not recycled are referred to as "virgin" timber when the distinction needs to be made for clarity. Short-rotation coppice is exempt from the requirements for timber and wood-derived products and falls under agricultural regulation and supervision rather than forestry;

(b) “Legal and Sustainable” means production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions (only), as defined by the document titled "UK Government timber procurement policy: Definition of Legal and Sustainable for timber procurement" (available at [www.gov.uk/government/publications/timber-definition-of-legal-and-sustainable](http://www.gov.uk/government/publications/timber-definition-of-legal-and-sustainable) or CPET). The edition current on the day the Contract is awarded shall apply;

(c) “FLEGT” means Forest Law Enforcement, Governance and Trade, and is a reference to the EU scheme to address the problem of illegally logged timber;

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

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

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

(g) "CPET" means the UK Government's Central Point of Expertise on Timber.

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

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

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

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

(the "Social Criteria").

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

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

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

D6.6 The Authority shall decide whether the evidence submitted to it demonstrates legality and sustainability, or FLEGT-licence or equivalent, and is adequate to satisfy the Authority that the Timber complies with Schedule 1 and complies with the requirements of the Social Criteria. If the Authority is not satisfied, the Provider shall commission and meet the costs of an "independent verification" and resulting report that will: (a) verify the forest source of the timber or wood; and (b) assess whether the source meets the relevant criteria.

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

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

## **E PROTECTION OF INFORMATION**

## E1 Authority Data

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

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

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

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

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

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

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

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

E1.8 If at any time the Provider suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Provider shall notify the Authority immediately and inform the Authority of the remedial action the Provider proposes to take.

## E2 Data Protection

E2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Provider is the Processor unless otherwise specified in Schedule 5. The only processing that the Provider is authorised to do is listed in Schedule 5 by the Authority and may not be determined by the Provider.

E2.2 The Provider shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

E2.3 The Provider shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

E2.4 The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with Schedule 5 unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that :
  - (i) the Staff do not process Personal Data except in accordance with this Contract (and in particular Schedule 5);
  - (ii) it takes 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 Provider's duties under this clause;
    - (B) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the European Union unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

- (i) the Authority or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with the GDPR Article 46 or LED Article 37) as determined by the Authority;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
- (iv) the Provider complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- (e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Provider is required by Law to retain the Personal Data.

E2.5 Subject to clause E2.6 the Provider shall notify the Authority immediately if, in relation to any Personal Data processed in connection with its obligations under this Contract, it:

- (a) receives a Data Subject Request (or purported Data Subject 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;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

E2.6 The Provider's obligation to notify under clause E2.5 shall include the provision of further information to the Authority in phases, as details become available.

E2.7 Taking into account the nature of the processing, the Provider shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Contract and any complaint, communication or request made under Clause E2.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

- (a) the Authority with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

(c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the Authority following any Data Loss Event;

(e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

E2.8 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:

(a) the Authority determines that the processing is not occasional;

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

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

E2.9 The Provider shall allow for audits of its Personal Data processing activity by the Authority or the Authority's designated auditor.

E2.10 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.

E2.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Provider must:

(a) notify the Authority in writing of the intended Sub-processor and processing;

(b) obtain the written consent of the Authority;

(c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause E2 such that they apply to the Sub-processor; and

(d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

E2.12 The Provider shall remain fully liable for all acts or omissions of any of its Sub-processors.

E2.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

E2.14 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Officer.

E2.15 This clause E2 shall apply during the Contract Period and indefinitely after its expiry.

E2.16 Not required.

### **E3 Official Secrets Acts and Finance Act**

E3.1 The Provider shall comply with the provisions of:

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

### **E4 Confidential Information**

E4.1 Except to the extent set out in this clause E4 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.

E4.2 The Provider hereby gives its consent for the Authority to publish the whole Contract (but with any information which is Confidential Information belonging to the Authority redacted) including from time to time agreed changes to the Contract, to the general public.

E4.3 If required by the Authority, the Provider shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in substantially the form attached in Schedule 6 and, if applicable, incorporating the requirements of clause E2.11. The Provider shall maintain a list of the non-disclosure agreements completed in accordance with this clause E4.3.

E4.4 If requested by the Authority, the Provider shall give the Authority a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Provider shall ensure that its Staff, professional advisors and consultants are aware of the Provider's confidentiality obligations under the Contract.

E4.5 The Provider may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

E4.6 The Provider shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.

E4.7 Clause E4.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

E4.8 Nothing in clause E4.1 shall prevent the Authority disclosing any Confidential Information obtained from the Provider:

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

provided that in disclosing information under clauses E4.8 (c) and (d) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

E4.9 Nothing in clauses E4.1 to E4.6 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.

E4.10 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Provider to whom the Provider's Confidential Information is disclosed pursuant to clause E4.6 is made aware of the Authority's obligations of confidentiality.

E4.11 If the Provider does not comply with clauses E4.1 to E4.6 the Authority may terminate the Contract immediately on written notice to the Provider.

E4.12 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Provider shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.

E4.13 The Provider will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches. The Provider will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Provider will co-operate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data.

E4.14 The Provider shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Provider has failed to comply with clause E4.12.

## **E5 Freedom of Information**

E5.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.

E5.2 The Provider shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt:

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

E5.3 The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

## **E6 Publicity, Media and Official Enquiries**

E6.1 Without prejudice to the Authority's obligations under the FOIA, the EIR or any obligations under the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

E6.2 The Provider shall use its reasonable endeavours to ensure that its Staff, professional advisors and consultants comply with clause E6.1.

## **E7 Security**

E7.1 The Authority shall be responsible for maintaining the security of the Authority's Premises in accordance with its standard security requirements. The Provider shall comply with all security requirements of the Authority while on the Authority's Premises, and shall ensure that all Staff comply with such requirements.

E7.2 The Authority shall give the Provider upon request copies of its written security procedures.

E7.3 The Provider shall, as an enduring obligation during the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

E7.4 Notwithstanding clause E7.3, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Authority Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency.

E7.5 Any cost arising out of the actions of the Parties taken in compliance with clause E7.4 shall be borne by the Parties as follows:

(a) by the Provider where the Malicious Software originates from the Provider Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Provider); and

(b) by the Authority if the Malicious Software originates from the Authority Software or Authority Data (whilst the Authority Data was under the control of the Authority).

## **E8 Intellectual Property Rights**

E8.1 All Intellectual Property Rights in:

(a) the Results; or

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

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

E8.2 The Provider hereby assigns:

(a) to the Authority, with full title guarantee, all Intellectual Property Rights (save for Copyright and Database Rights) which may subsist in the IP Materials prepared in accordance with clauses E8.1(a) and (b). This assignment shall take effect on the date of the Contract or (in the case of rights arising after the date of the Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Provider; and

(b) to Her Majesty the Queen, with full title guarantee, all Copyright and Database Rights which may subsist in the IP Materials prepared in accordance with clauses E8.1 (a) and (b),

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

E8.3 The Provider shall:

(a) waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract;

(b) ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Crown, the Replacement Provider or to any other third party supplying goods and/or services to the Authority (“Indemnified Persons”);

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

(d) during and after the Contract Period, indemnify and keep indemnified the Authority and the Indemnified Persons from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or Indemnified Persons may suffer or incur as a result of or in connection with any breach of this clause E8.3, except to the extent that any such claim results directly from:

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

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

E8.4 The Authority shall notify the Provider in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Provider to the Authority.

E8.5 The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority, the Provider or Indemnified Person) arising from the performance of the Provider’s obligations under the Contract (“Third Party IP Claim”), provided that the Provider shall at all times:

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

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

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

E8.6 The Authority shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Provider shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Provider shall not be required to indemnify the Authority under this clause E8.6 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E8.3(d) i) and ii).

E8.7 The Authority shall not, without the Provider's consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.

E8.8 If any Third Party IP Claim is made or in the reasonable opinion of the Provider is likely to be made, the Provider shall notify the Authority and any relevant Indemnified Person, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses E8.3(b) and G2.1(g)) use its best endeavours to:

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

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

and if the Provider is unable to comply with clauses E8.8(a) or (b) within 20 Working Days of receipt by the Authority of the Provider's notification the Authority may terminate the Contract immediately by notice to the Provider.

E8.9 The Provider grants to the Authority and, if requested by the Authority, to a Replacement Provider, a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Provider owned or developed prior to the Commencement Date and which the Authority (or the Replacement Provider) reasonably requires in order for the Authority to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).

## **E9 Audit**

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

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

E9.3 The Provider shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Provider's records and documents relating to the

Contract and to provide such copies and oral or written explanations as may reasonably be required.

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

## **E10 Tax Compliance**

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

- (a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
- (b) promptly give the Authority:
  - i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
  - ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

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

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

## **F. CONTROL OF THE CONTRACT**

### **F1 Failure to meet Requirements**

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

## **F2 Monitoring of Contract Performance**

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

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

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

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

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

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

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

## **F3 Remedies for inadequate performance**

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

(a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider has demonstrated to the Authority's reasonable satisfaction that the Provider will be able to supply the Services in accordance with the Specification;

(b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;

(c) withhold or reduce payments to the Provider in such amount as the Authority reasonably deems appropriate in each particular case; and/or

(d) terminate the Contract in accordance with clause H2.

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

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

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

(a) direct the Provider to identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or

(b) withhold or reduce payments to the Provider in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.

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

(a) use all reasonable endeavours to immediately minimise the impact of such failure to the Authority and to prevent such failure from recurring; and

(b) immediately give the Authority such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause F3.5 and the progress of those measures until resolved to the satisfaction of the Authority.

F3.6 If, having been notified of any failure, the Provider fails to remedy it in accordance with clause F3.5 within the time specified by the Authority, the Authority may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Provider.

## **F4 Transfer and Sub-Contracting**

F4.1 Except where clauses F4.6 and F4.7 both apply, the Provider shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it

without Approval. All such documents shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract shall not relieve the Provider of any of its obligations or duties under the Contract.

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

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

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

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

F4.5 If the Authority believes there are:

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

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

- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
- (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
- (c) the Authority receiving notification under both clauses F4.7 and F4.8.

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

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

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

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

- (a) any Contracting Authority;
- (b) any other body established or authorised by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
- (c) any private sector body which substantially performs the functions of the Authority

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

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

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

- (a) the rights of termination of the Authority in clauses H1 and H2 shall be available to the Provider in respect of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Provider.

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

F4.14 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

## **F5 Waiver**

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

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

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

## **F6 Variation**

F6.1 If, after the Commencement Date, the Authority's requirements change, the Authority may request a Variation subject to the terms of this clause 6.

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

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

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

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

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

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

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

## **F7 Severability**

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

## **F8 Remedies Cumulative**

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

## **F9 Entire Agreement**

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

## **F10 Counterparts**

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

# **G LIABILITIES**

## **G1 Liability, Indemnity and Insurance**

G1.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982;
- (c) any breach of clauses D1, E1, E2 and E4;
- (d) Schedule 8; or
- (e) any liability to the extent it cannot be limited or excluded by Law.

G1.2 Subject to clauses G1.3 and G1.4, the Provider shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under the Contract or the presence of the Provider or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly by any act or omission of the Provider.

G1.3 Subject to clause G1.1 the Provider's aggregate liability in respect of the Contract shall not exceed £1,000,000.

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

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

(a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

(b) any wasted expenditure or charges;

(c) the additional costs of procuring a Replacement Provider for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Provider and/or replacement deliverables above those which would have been payable under the Contract;

(d) any compensation or interest paid to a third party by the Authority; and

(e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

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

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

(b) indirect, special or consequential loss.

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

be maintained for the duration of the Contract Period and for a minimum of 6 years following the end of the Contract.

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

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

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

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

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

## **G2 Warranties and Representations**

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

- (a) it has full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Provider;
- (b) in entering the Contract it has not committed any fraud;
- (c) as at the Commencement Date, all information contained in the Tender or other offer made by the Provider to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider 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 Provider's assets or revenue;

(g) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

(h) any person engaged by the Provider shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;

(i) in the 3 years (or period of existence where the Provider has not been in existence for 3 years) prior to the date of the Contract:

i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;

(j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and

(k) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

### **G3 Force Majeure**

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

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

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

(a) are capable of being mitigated by any of the Services, but the Provider has failed to do so; and/or

(b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Contract.

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

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

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

(a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:

i) the other Party shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and

ii) neither Party shall be liable for any Default arising as a result of such failure;

(b) the Provider fails to perform its obligations in accordance with the Contract it shall be entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.

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

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

## **H DEFAULT, DISRUPTION AND TERMINATION**

### **H1 Termination on Insolvency and Change of Control**

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

(a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;

- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- (g) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

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

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider's creditors;
- (b) a petition is presented and not dismissed within 14 days or order made for the Provider's bankruptcy;
- (c) a receiver, or similar officer is appointed over the whole or any part of the Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
- (d) the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 days;
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or

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

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

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

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

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

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

(a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or

(b) it is for any reason dissolved; or

(c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or

(d) a receiver, or similar officer is appointed over the whole or any part of its assets; or

(e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or

(f) any of the following occurs in relation to any of its partners:

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

(ii) a petition is presented for his bankruptcy; or

(iii) a receiver, or similar officer is appointed over the whole or any part of his assets;

(g) any event similar to those listed in clauses H1.4(a) to (f) occurs under the law of any other jurisdiction .

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

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) it is for any reason dissolved;
- (c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
- (d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
- (e) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
- (f) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (i) any event similar to those listed in clauses H1.5 (a) to (h) occurs under the law of any other jurisdiction.

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

## **H2 Termination on Default**

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

- (a) the Provider has not remedied the Default to the satisfaction of the Authority within 25 Working Days or such other period as may be specified by the Authority, after issue of a notice specifying the Default and requesting it to be remedied;
- (b) the Default is not, in the opinion of the Authority, capable of remedy; or
- (c) the Default is a Material Breach.

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

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

### **H3 Termination on Notice**

H3.1 The Authority may terminate the Contract at any time by giving 30 days' notice to the Provider.

### **H4 Other Termination Grounds**

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

- (a) the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
- (b) the Provider was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57 (2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract;
- (c) the Contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU; or
- (d) the Provider has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.

### **H5 Consequences of Expiry or Termination**

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

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

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

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

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

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

## **H6 Disruption**

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

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

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

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

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

## **H7 Recovery upon Termination**

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

(a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Providers, which was obtained or produced in the course of providing the Services;

(b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Provider in good working order;

(c) immediately vacate any Authority Premises occupied by the Provider;

(d) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Provider and/or the completion of any work in progress; and

(e) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Provider to conduct due diligence.

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

## **H8 Retendering and Handover**

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

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

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

H8.4 The Provider shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Provider is required to provide under clause H8.1.

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

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

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

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

catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

## **H9 Exit Management**

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

## **H10 Exit Procedures**

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

H10.2 The following commercial approach shall apply to the transfer of the Services if the Provider:

- (a) does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Price; or
- (b) reasonably incurs additional costs, the Parties shall agree a Variation to the Price based on the Provider's rates either set out in Schedule 2 or forming the basis for the Price.

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

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

## **H11 Knowledge Retention**

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

# **I DISPUTES AND LAW**

## **I1 Governing Law and Jurisdiction**

I1.1 Subject to the provisions of clause I2 the Contract, including any matters arising out of or in connection with it, shall be governed by and interpreted in accordance with English

Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not limit the right of the Authority to take proceedings against the Provider in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

## **12 Dispute Resolution**

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

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

12.3 If the dispute cannot be resolved by the Parties pursuant to clause 12.1 either Party may refer it to mediation pursuant to the procedure set out in clause 12.5.

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

12.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

- (a) a neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
- (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;
- (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and

(f) if the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause I2.6.

I2.6 Subject to clause I2.2, the Parties shall not institute court proceedings until the procedures set out in clauses I2.1 and I2.3 have been completed save that:

(a) The Authority may at any time before court proceedings are commenced, serve a notice on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7;

(b) if the Provider intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority shall have 21 days following receipt of such notice to serve a reply on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7; and

(c) the Provider may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause I2.7, to which the Authority may consent as it sees fit.

I2.7 If any arbitration proceedings are commenced pursuant to clause I2.6,

(a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Provider (the "Arbitration Notice") stating:

(i) that the dispute is referred to arbitration; and

(ii) providing details of the issues to be resolved;

(b) the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

(c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

(d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause I2.7(a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

(e) the arbitration proceedings shall take place in London and in the English language; and

(f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

# SCHEDULE 1 - SPECIFICATION

This Section sets out the Authority's requirements.

## 1 Background to the Requirement

- 1.1 The Animal and Plant Health Agency (APHA) is an Executive Agency of the Department for Environment and Rural Affairs (Defra) and delivers the Animal Health and Welfare policies of Defra, Scottish Government and Welsh Government across Great Britain (GB). One of its principal functions is the safeguarding of animal health and welfare and public health, which in turn supports economic growth and trade.
- 1.2 APHA primarily works to prevent and control animal disease across Great Britain through activities on farms, at markets and other livestock-related premises, and through specialist veterinary laboratory and scientific services. APHA is also responsible for advising policy-making departments and providing a veterinary evidence base for animal health and welfare policy decisions. The range of functions also includes research and consultancy, surveillance and management of disease controls, (including import and export controls), and protecting the nation's food supply through activities such as egg marketing inspections.
- 1.3 APHA also has global responsibilities, notably acting as the national and international reference laboratory for a number of exotic and zoonotic notifiable diseases, and protecting CITES-listed species through its wildlife registration and licensing role.
- 1.4 One of the many functions performed by APHA is scanning surveillance for notifiable diseases and new and re-emerging threats (NRT) to Animal health, including:
  - new diseases and pathogens,
  - notifiable diseases;
  - exotic disease not previously seen in Great Britain (GB);
  - new strains of pathogens already in GB;
  - changes in trends of endemic diseases;
  - new, rare or unusual antimicrobial resistance pattern, diseases in animals with a human health concern e.g. zoonoses and toxicities;
  - other unusual diagnoses.
- 1.5 Scanning surveillance also helps to fulfil statutory national and international disease reporting requirements, identifies welfare problems and suspect adverse medicines reactions.
- 1.6 This is delivered through close collaboration with the livestock industry, combined with post mortem examination (PME) and sample testing of Carcasses. These actions enable prompt action to be taken to reduce impacts on farming and the public. In recent years, the existing surveillance programme has been responsible for the early detection of pandemic (H1N1) 2009 influenza virus in pigs, avian notifiable disease outbreaks in poultry, bovine tuberculosis in non-bovine species, antimicrobial resistance in *Salmonella*, virulent psoroptic mange in cattle, feed related vitamin A toxicity in lambs and detection of Schmallenberg virus. In addition, the programme has provided reassurance of the national animal health status

which has supported international trade, and has facilitated substantial savings in Transmissible Spongiform Encephalopathy (TSE) surveillance.

- 1.7 The cost of this data collection, the subsequent investigation of the alerts generated, the risk assessment of threats identified and the communication of these threats to those that need to take action must be affordable and efficient.
- 1.8 The services required by this Contract include:
  - 1.8.1 Alerting APHA to suspicions of notifiable disease, NRT and animal welfare issues (see Section 3.7).
  - 1.8.2 Participation as part of an extended network of Veterinary Staff with experience in Animal disease investigation, diagnosis and pathology, actively engaging in Government surveillance for potential NRT in Animals.
  - 1.8.3 Day-to-day discussion with Private Veterinary Surgeons (PVS) about disease incidents where specialist advice is needed.
  - 1.8.4 Examination of Animal Carcasses with the objective of diagnosing disease.
  - 1.8.5 Collection and reporting of data from PME and disease investigations of Animals for the purpose of accumulation of surveillance intelligence.

## 2 Overview of Requirement

- 2.1 The Authority requires Providers who can operate a PME diagnostic and surveillance service for Animals as part of an integrated network alongside APHA PME sites, covering areas highlighted in **Annex A**.
- 2.2 Animals shall include the following species:
  - i. Cattle, buffalo and bison
  - ii. Farmed Deer
  - iii. Pigs
  - iv. Sheep / Goats
  - v. Camelids (i.e. Alpacas / Llamas / Guanacos)
  - vi. Poultry
  - vii. Other animals as deemed of sufficient surveillance value by APHA. These will be discussed with the Providers on a case by case basis to determine if the Provider has the expertise to carry out the PME.
- 2.3 The Services will be partially subsidised by APHA. Where the Provider determines further remuneration for certain elements of the Services is required they may seek it directly from PVS up to the maximum value detailed in Schedule 2 – Pricing Schedule.
- 2.4 The Provider will follow APHA's processes for Carcase selection and PME processing outlined in Section 3.

- 2.5 Surveillance data collection requirements are outlined in **Annex B**. APHA will provide a Data Capture Tool for the Provider to record surveillance activities – see Section 3.10 for further details.

### **3 Detailed Requirements**

#### **3.1 Coverage and Service Availability**

- 3.1.1 The Provider shall provide a standardised PME service to veterinary practices in an APHA Assigned Area resulting in a quality-assured dataset aligned with the VIDA data-recording requirements. Appendix A includes a map detailing the APHA Assigned Area for the Provider. Appendix B includes the Out-Codes for the APHA Assigned Area for the Provider.
- 3.1.2 The Provider shall supply a PME service on all Working Days with service hours from 09:00hrs to 17:00hrs. Providers shall get Carcase submissions discussed, delivered and examined on the same day where Carcases are delivered before 15:00hrs.
- 3.1.3 Carcases delivered after 15:00hrs shall be examined no later than the following Working Day, provided they are kept in cold storage overnight. Some Carcase Collectors may have cold storage availability and Providers may be able to negotiate use of this facility and have the Carcase delivered the following Working Day.
- 3.1.4 Qualified veterinary surgeons are required to be available at all times of the Working Day so that PMEs are conducted within the required timescales.

#### **3.2 Triage and Carcase Collection**

- 3.2.1 Triage is defined as the process of determining the priority of patients' treatments based on the severity of their condition. In the context of scanning surveillance for livestock disease, it is the process by which an assessment is made to ensure that government funding for subsidised PMEs is correctly targeted by selection of suitable cases for submission. Collection of epidemiological data from cases which are discussed but not submitted for PME also forms a part of scanning surveillance. This triage is applicable only to cases which are submitted for APHA subsidised PME.
- 3.2.2 The Provider will follow the triage process detailed below in 3.2.3 and 3.2.4 to determine if the Carcase(s) meet the criteria for potential surveillance value. The Provider shall keep records of discussions with PVS prior to submission which shall be made available for audit by APHA on request.
- 3.2.3 Triage requirements:
- Discussion between the Provider and submitting PVS prior to submission;
  - Agreement of PVS to the PME charge from the Provider;
  - Sufficient clinical history from the PVS to make an assessment;
  - Date and estimated time of death of the animal(s).
- 3.2.4 Triage selection criteria:

##### **3.2.4.1 General**

- Animals dead for more than twenty-four (24) hours are likely to be of less diagnostic value and shall only be accepted after careful consideration of factors likely to influence diagnostic value, including storage temperature since death.
- Animals dead for more than forty-eight (48) hours shall not be accepted.
- In Outbreaks, a maximum of three (3) mammalian and five (5) bird Carcasses may be submitted together from a single disease incident on each farm.

#### 3.2.4.2 Specific to disease condition

- Information in the APHA sample submission handbook provides general and species-specific guidelines on diagnosis of common disease presentations in livestock.
- Reference to this handbook is important to assist the Provider and PVS on selection of best Carcase or non-Carcase material for different disease conditions. The handbook can be found on Vet Gateway: <http://apha.defra.gov.uk/vet-gateway/index.htm>.

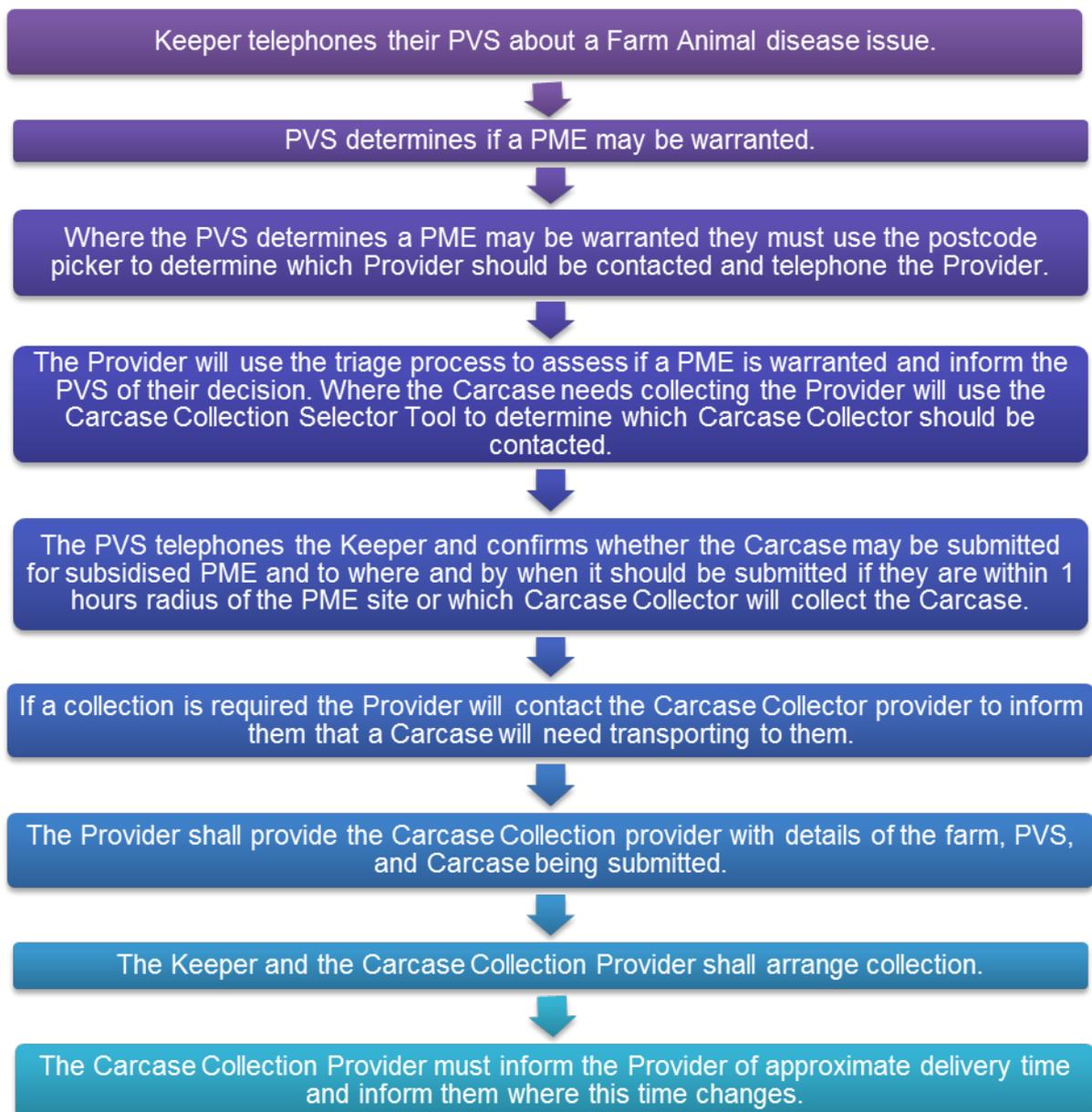
3.2.5 If the Provider believes that there are sound surveillance reasons for deviating from this triage process, they should contact the relevant APHA Species Expert Group (SEG) Lead to discuss. Details of SEG Leads can be found on Vet Gateway.

3.2.6 A Carcase collection service (paid for by the Authority) is provided to Keepers who are more than one (1) hour's drive from the PME facility. Keepers are expected to transport and deliver a Carcase themselves within the one (1) hour radius of the PME facility. Where there is a requirement for a Carcase to be collected, the Provider must use the Carcase Collection Selector Tool (an excel spreadsheet provided by the Authority) to determine which Carcase Collector shall be contacted to collect the Carcase. Where a carcase is at a PVS site the Keeper's location shall be used to determine if the Keeper is eligible for Carcase Collection. The Carcase Collection Selector Tool shall then be used to determine which Carcase Collector shall be contacted using the PVS location.

3.2.7 The Provider must use the Carcase Collector that the Selector Tool highlights as the preferred Carcase Collector unless there is a reason that this Carcase Collector cannot carry out the collection. The Provider shall record reasons where the preferred Carcase Collector is not used.

3.2.8 Carcase Collectors are expected to liaise with the Provider with regards to delivery time and shall update the Provider if there is a change of estimated delivery time.

3.2.9 The Provider shall accept Carcasses where the initial triage conversation was between a PVS and an APHA VIO. In these situations the VIO will provide a record of the triage conversation, including details of clinical history, aims of the PME and what Carcasses the Provider should expect.



### 3.3 PME and Diagnostic Tests

- 3.3.1 The Provider shall adopt PME processes that provide a quality-assured dataset aligned with the VIDA data-recording requirements as detailed in Annex C.
- 3.3.2 The Provider shall only be paid for surveillance information from PMEs if the acceptance criteria detailed in 3.2.3 and 3.2.4 have been met.
- 3.3.3 The Provider can offer to carry out PMEs which are not of surveillance value; however, payment for this service should be arranged between the Provider and the PVS.
- 3.3.4 For each PME, the Provider will need to ensure their records/PME report includes the following, which shall be available to APHA if required:
- (a) For each Carcase, record:
    - Weight;
    - Sex;

- Condition (whether live/dead/frozen);
  - Carcase body condition;
  - Degree of autolysis;
  - If applicable, method of euthanasia.
- (b) For each body system (e.g. respiratory, enteric, nervous system), record:
- Whether examined;
  - If examined, whether there was anything remarkable about specified organs. If so, a description is needed of lesions using standard pathological terms.
- 3.3.5 Appropriate samples to reach a diagnosis shall be taken, with reference to case history.
- 3.3.6 The Provider shall arrange for tests they deem appropriate to be carried out, either by APHA or, by another ISO 17025 accredited laboratory. Guidance on appropriate tests can be found in 'Livestock & Wildlife Disease Diagnosis at APHA - Guidance on sample and test selection' which is on Vet Gateway' (<http://apha.defra.gov.uk/vet-gateway/index.htm>).
- 3.3.7 Test selection shall take account of the requirements for specific evidence before reaching diagnoses. Full documentation of these diagnosis criteria are detailed in the VIDA document (EDW 156 – Veterinary Investigation Diagnosis Analysis Code List Annex 1), access to which will be given to all Providers.
- 3.3.8 The cost of diagnostic testing and recovery of this cost will be entirely from the applicable PVS, and shall be the responsibility of the Provider to invoice and recover payment within the publicised PME cost (if any).
- 3.3.9 For any tests commissioned on behalf of the PVS, the Provider shall balance the requirement to pursue a diagnosis against the cost of tests to ensure the best possible outcome is achieved for the best value for money.
- 3.3.10 When there is reasonable suspicion that a particular case may warrant further investigation as a suspect NRT, the Provider shall contact the relevant SEG Lead at the SIU and seek agreement to test samples at an APHA VIC at no additional cost.
- 3.3.11 Surveillance data required by APHA shall include VIDA codes relevant to the test carried out.
- 3.3.12 The transfer of data relating to tests carried out at other accredited laboratories to APHA shall be the responsibility of the Provider.
- 3.3.13 The Provider may be asked by APHA to submit specific sample types from Carcasses examined to support Government statutory surveillance requirements. These samples shall be submitted to an APHA VIC. Where APHA request the Provider to submit specific samples the total additional costs of sample collection, handling and postage will be covered by APHA and the Provider will invoice APHA for the additional costs incurred.

#### **3.4 Sample Handling**

- 3.4.1 All samples collected during a PME shall be handled in accordance with legislation for posting animal by-products (ABP). Attention shall be paid to biosecurity, health

and safety regulations (see Section 3.12) and the need to provide a satisfactory audit trail.

3.4.2 Samples taken as per 3.3.6 and 3.3.7 shall be sent at the Provider's expense to the testing laboratory, ensuring next-day delivery.

3.4.3 The Provider shall agree appropriate arrangements with the testing laboratory for samples taken on the last Working Day of the Working Week.

### **3.5 Recording of Findings and Diagnoses**

3.5.1 The Provider shall produce a written report of the history and initial PME findings within one (1) Working Day of completing the examination. Supplementary reports shall be created as diagnostic test results come through and add to the emerging conclusions.

3.5.2 All reports shall be sent to the commissioning PVS within one (1) Working Day of completion of the report.

3.5.3 Final reports are a key resource for the network of SEGs and must include a heading summary under which the main findings, conclusions and recommendations of the investigation are summarised.

3.5.4 The Provider shall store final reports for a minimum of seven (7) years from the date of the report. These must be made available to APHA as required.

3.5.5 Appropriate diagnosis coding shall be assigned to each Carcase submission, using the rules provided in **Annex B** and inputted into APHA's Data Capture Tool (See Section 3.10 for further information).

### **3.6 Data Protection**

3.6.1 The PME data collected will contain Personal Data. The Provider shall comply at all times with GDPR and shall not perform its obligations (including in its relationship with PVS, Carcase Collectors and Keepers) under the Contract in such a way as to cause APHA to breach any of its applicable obligations under the GDPR as per data protection requirements laid out in the Terms and Conditions.

### **3.7 Surveillance Reporting Responsibilities**

3.7.1 The Provider shall operate as part of the APHA surveillance network and assist with the early detection and identification of NRT. The Provider shall:

- Discuss cases with a network of national experts to immediately alert or raise any suspicion of NRT or notifiable disease or any other significant finding such as a possible food safety or human health risk. APHA will provide detailed guidance upon appointment.
- Capture and disseminate intelligence from England and Wales, upon which the surveillance network depends.

3.7.2 Where the Provider suspects a notifiable disease or animal welfare issue, they have a legal duty to report it immediately by calling the Defra Rural Services

Helpline on 03000 200 301. In Wales, contact 0300 303 8268. In Scotland, contact the local [Field Services Office](https://www.gov.uk/government/organisations/animal-and-plant-health-agency/about/access-and-opening#scotland-field-service-offices)  
<https://www.gov.uk/government/organisations/animal-and-plant-health-agency/about/access-and-opening#scotland-field-service-offices>.

### **3.8 Key Personnel & Veterinary Staff**

- 3.8.1 The Provider shall ensure that they have enough competent Veterinary Staff to carry out the service including cover for absences (for example, leave and sickness).
- 3.8.2 The Provider's Veterinary Staff shall be competent in Animal disease investigation and diagnosis, as well as in the pathology of routine diseases. They shall have experience in carrying out PME's on the Animal species referred to in Section 2.2.
- 3.8.3 The Provider's staff who discuss cases with a PVS and carry out PME's shall be registered with the RCVS, and shall have the following competencies:
- Good knowledge of the farming industry in Great Britain;
  - Competence and experience in large animal veterinary practice; specifically differential diagnosis for common disease presentations, disease investigation and diagnosis, including the ability to use multiple sources of information as part of these investigations;
  - Competence and experience or qualification in gross pathology of Animals species referred to in Section 2.2;
  - Knowledge of most common diseases in these Animals, an awareness of the clinical signs and pathology of notifiable diseases and an ability to recognise NRT;
  - Awareness of current known NRT.
- 3.8.4 Evidence of the experience, competencies, and/or qualifications of staff will be required by APHA before they start work under the contract so that they can be approved to undertake work under the contract by APHA. This information shall be regularly updated and must be available upon request by APHA to ensure compliance with the processes and competency of staff.
- 3.8.5 To ensure that all staff performing PME's meet the required standards, the Provider shall ensure that robust training and auditing processes are in place including an internal peer review audit of PME reports. Evidence of this shall be provided to APHA during contract review meetings.
- 3.8.6 The Provider's staff carrying out PME's shall have good access to externally recognised and qualified pathologists with working knowledge of the relevant species.
- 3.8.7 The Provider's PME team shall have access to board-certified pathologists (ACVP, ECVP and/or FRCPath), though this expertise does not need to be part of the Provider's own team.

3.8.8 The Provider shall provide a list of the Key Personnel which should be maintained by the Provider throughout the duration of the contract, and validated by APHA's Supplier Liaison Officer (SLO) during the annual contract review meeting.

### **3.9 Facilities**

3.9.1 The Provider's PME facilities shall be either purpose-built or converted to function as a post mortem facility. The Provider shall provide APHA with a plan of the facilities and the Health and Safety standards in operation at the site. Minimum requirements include:

- Closed room – it must be possible to close all entrance/exit points
- Sealed floor – construction such that it can be cleaned and disinfected and laid in such a way as to facilitate the drainage of liquids
- Hot and cold running water
- Electrical safety
- Equipment for safely lifting carcasses that can lift at least 1000kg. Alternative ways for carrying out post mortems in place for carcasses over 1000kg where lifting equipment doesn't lift more than 1000kg
- Tables that can facilitate PME and that can be cleaned and disinfected
- Lighting that facilitates detailed examination of tissues
- Drainage
- Adequate changing rooms and wash basins for staff
- Protection against pests such as birds, insects and rodents
- An environment that supports uncontaminated samples for bacteriology to be taken.

3.9.2 The facilities shall be able to handle Carcasses up to and including large adult bovines, and shall be available to examine any Carcase material safely, particularly with regard to zoonotic infection.

3.9.3 The Provider's facilities shall have an onsite bio secure cold store or, access to a bio secure cold store with sufficient capacity to facilitate storage of animals of at least 250kgs. Storage must have surfaces that are sealed and can be cleaned and disinfected. The store must be able to be locked if outside of a secure area.

3.9.4 The Provider shall supply APHA with records of Carcasses, animal by-products (waste) and personnel movements associated with the Services carried out on behalf of APHA.

### **3.10 IT requirements**

3.10.1 The Provider shall use the Data Capture Tool provided by APHA to record the data from the surveillance activities unless authorised in writing by APHA not to. The Data Capture Tool currently has the following system requirements:

- Windows PC running Windows7 (32bit), Windows 8, Vista or XP;
- Broadband internet connection;
- Email account;
- Local Area Network (LAN) for optional multi-user setup.

These system requirements may be subject to change during the Contract.

3.10.2 The surveillance data to be recorded on the Data Capture Tool is detailed in **Annex B**.

3.10.3 The Provider shall submit data to APHA on a weekly basis.

3.10.4 APHA shall send the Provider a file of any rejected data, which the Provider shall correct and resubmit back to APHA within three (3) Working Days.

### **3.11 Risk management**

3.11.1 For the purpose of understanding and managing risks associated with carrying out the Services specified in the Contract and appropriate health and safety law, the Provider shall create, maintain and manage a risk register in relation to their responsibilities and relationship with APHA.

3.11.2 The risk register will act as a central repository for all risks identified by the Provider and, for each risk, include information such as risk probability, impact, mitigations and, risk owner. The risk register will be a standing agenda item for discussion at regular Contract Management meetings with APHA.

3.11.3 The Provider shall submit a written plan, regarding biosecurity associated with the post mortem facility and a written contingency plan for actions to take in the event that a Notifiable disease is suspected on site, to APHA prior to commencement of the Contract. The plans shall provide APHA with assurance that the required standards for containment procedures for both endemic and notifiable disease shall be met as a minimum. Specific areas include:

- Carcase storage;
- Carcase & clinical waste disposal;
- Waste water, effluent disposal and holding tanks as appropriate;
- Cleansing and disinfection procedures.

3.11.4 The Provider shall submit a detailed Business Contingency and Disaster Recovery Plan (BCDR), identifying the range of risks that may affect the delivery of Services before the start of the Contract.

3.11.5 The Provider shall review, test, change, and maintain a BCDR Plan during the term of the Contract for use in the event of a disaster or other event (or combination of events) that might result in the loss or partial loss of availability of Services.

3.11.6 The purpose of the BCDR Plan shall be to ensure that, in the event of a disruption, howsoever caused, the Authority is able to maintain continuance of the Services. The BCDR Plan shall cater for any failure or disruption and shall address the various possible levels of failure or disruption (that is, from minimal failure through to total failure).

3.11.7 The BCDR Plan shall detail the processes and arrangements which the Provider shall follow to ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services and the recovery of the Services in the event of a disaster or other event (or combination of events) that might result in the loss or partial loss of availability of Services.

3.11.8 The Provider shall provide a copy of their BCDR Plan to the Authority and provide details of any reviews, testing and updates taking place during the Contract Term.

The Authority will review the BCDR Plan in consultation with the Provider at least annually, and following any issue that causes the plan to be enacted.

3.11.9 In the event of a disaster or other event (or combination of events) that might result in the loss or partial loss of availability of Services, the Provider shall immediately invoke the BCDR Plan (and shall inform the Authority promptly).

### **3.12 Standards and Regulations**

3.12.1 The Provider shall comply with all relevant EU and UK legislation and policy in force (as amended from time to time), as relevant to these Services, for its employees, customers and members of the public, including but not limited to:

3.12.2 The Provider is required to have a Health & Safety policy which covers the minimum standard laid out in the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999 and subsequent amendments. Work must not be carried out in contravention of this legislation.

3.12.3 It is the Provider's sole responsibility to carry out the necessary generic risk assessments and introduce control measures to ensure compliance with the foregoing and any other relevant legislation.

3.12.4 Providers will comply with the *Control of Substances Hazardous to Health (COSHH) Regulations 2002* (as amended) which apply to the way you work with certain substances, such as disinfectants. Full guidance on the legal requirements are available on the HSE website: <http://www.hse.gov.uk/coshh/>

3.12.5 The Provider must help to minimise the risk of disease occurring or spreading, safeguarding the health and welfare of animals and protecting the viability of businesses by adopting appropriate biosecurity measures. These must, at a minimum, be the equivalent of Defra and Welsh Governments Standards.

<https://www.gov.uk/guidance/controlling-disease-in-farm-animals>

<http://gov.wales/topics/environmentcountryside/ahw/disease/bovinetuberculosis/biosecurity/?lang=en>

<http://gov.wales/topics/environmentcountryside/ahw/disease/bovinetuberculosis/biosecurity/?skip=1&lang=cy>

3.12.6 Providers must conduct the removal, transport and disposal of Carcasses in accordance with *Regulation (EC) 1069/2009* and *The Animal By-Product (Enforcement) Regulation*, as applicable in the relevant Region. Further information is available at:

[http://www.legislation.gov.uk/uksi/2013/2952/contents/made?utm\\_medium=email&](http://www.legislation.gov.uk/uksi/2013/2952/contents/made?utm_medium=email&)

<http://www.legislation.gov.uk/ssi/2013/307/contents/made>

<http://www.legislation.gov.uk/wsi/2014/517/made>

3.12.7 Providers must ensure that all PME facilities, vehicles and equipment used in delivery of the Service are maintained in good working order at all times in

accordance with Regulation (EC) 1069/2009 and The Animal By-Product (Enforcement) Regulations, as applicable in the relevant Region.

3.12.8 Providers must comply with the relevant health and safety guidelines issued to protect humans from diseases, found at the following link:

<https://www.gov.uk/guidance/animal-by-product-categories-site-approval-hygiene-and-disposal>

3.12.9 Providers must consult with the Environment Agency to ensure they have the relevant permits/licences to conduct the Services.





# Appendix C to the Specification – Performance Management Framework (including Key Performance Indicators)

## 1 Performance Management

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

Management report and relates to the KPIs then the service credit regime may apply, at the sole discretion of APHA.

## **2 Service Credits**

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

**Table A: KPI's**

<b>KPI</b>	<b>Description</b>	<b>Measure</b>	<b>KPI Target</b>	<b>Notes</b>	<b>Source(s)</b>	<b>Service Credit Rating</b>
<b>KPI 1 - Service delivery</b>	Timely reporting of information	Provider submits data on a weekly basis.	100%		APHA Report (statistical)	2
<b>KPI 2 - Service Delivery</b>	Accuracy of surveillance data	The Provider shall provide error free reports to APHA	98%	Format of reports as per Annex B: Surveillance Data Collection	SLO Report	1
<b>KPI 3 - Quality Assurance</b>	Quality Assurance	VIDA diagnosis reached that is acceptable to APHA	80%	To be discussed at MOM under agenda item "Submissions" - number of VIDA diagnoses and DNR. It is expected that a VIDA diagnosis will be reached in at least 80% of PME's conducted (excluding abortions), or that a DNR is acceptable to APHA (i.e. in the case of abortions).	APHA Report (statistical) Provider evidence and discussion in QCM	1

## Appendix D to the Specification – Contract Governance

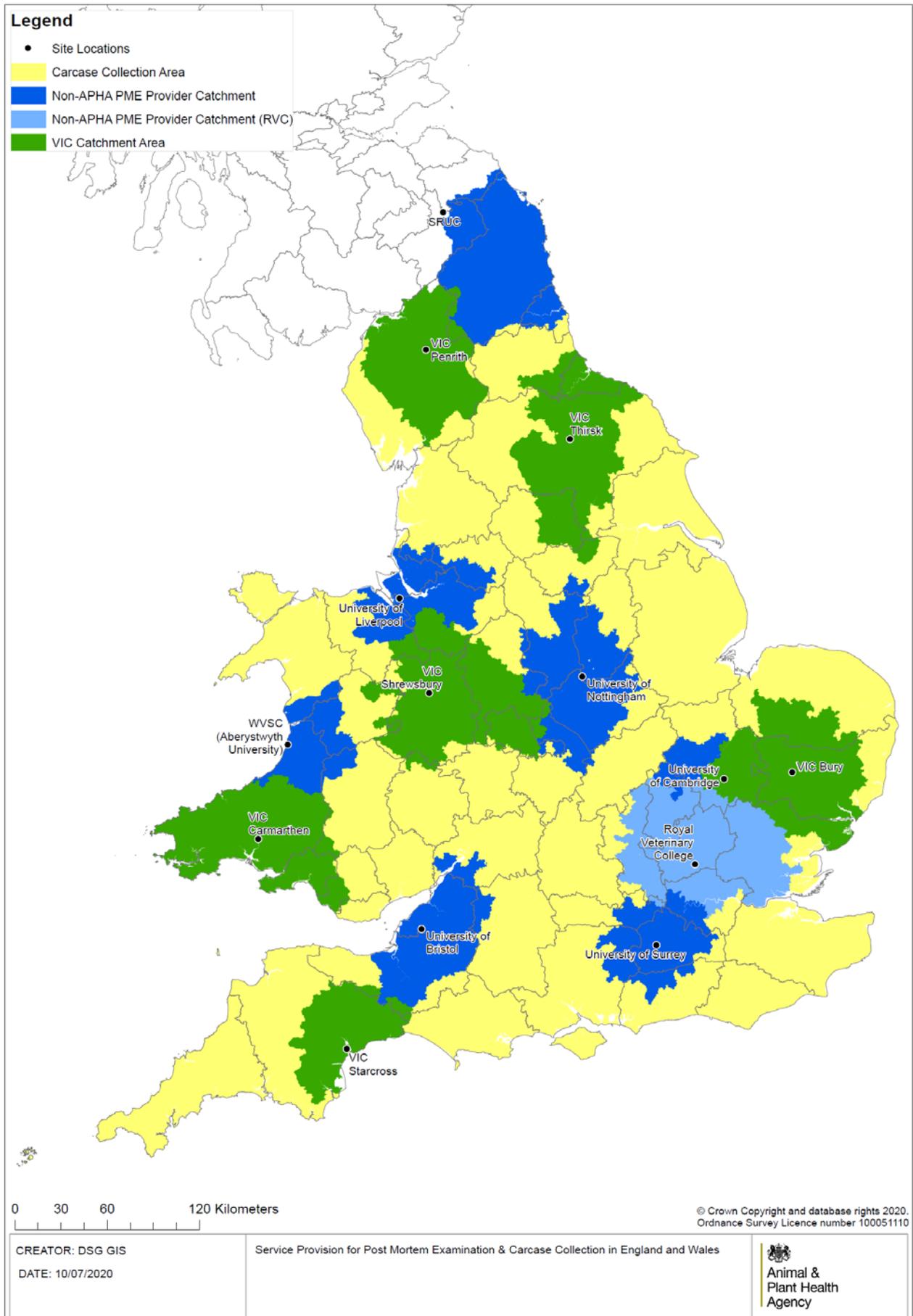
- 1 APHA will manage the contracts for services resulting from this procurement on behalf of APHA. APHA will appoint:
  - Supplier Liaison Officers (SLO)
  - Deputy SLOs (DSLO)
  - Contract Manager (CM)
- 2 APHA will appoint an SLO and DSLO as appropriate to act as the principal point of contact. A single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

**Table A. Contract Management Meeting Schedule**

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

# Annex A to the Specification – APHA Assigned Areas

OFFICIAL - SENSITIVE



# Annex B to the Specification – Surveillance Data Collection

## General

All the data must be provided using coded options agreed with APHA Surveillance Intelligence Unit, so that it can contribute to a harmonised national dataset. Where valid options depend on logic this logic must be followed. (E.g. Purpose of Beef is only valid for Species of Cattle)

Data Area	Required Items (minimum dataset)
General	<ol style="list-style-type: none"> <li>1. Date of Receipt</li> <li>2. Date of Death</li> <li>3. Unique Reference number for the submission</li> </ol>
Customers	<ol style="list-style-type: none"> <li>4. An identifier for the Vet Practice that can be recognised by APHA</li> <li>5. CPH or Postcode of the farm where the animals were located, Keeper name and address</li> </ol>
Livestock Affected	<ol style="list-style-type: none"> <li>6. Species, Age, Sex, Breed</li> <li>7. No. of animals in the Herd/Flock and No in Group,</li> <li>8. Purpose (Dairy, Beef etc.), Housing, Whether Organic</li> </ol>
Clinical History	<ol style="list-style-type: none"> <li>9. Clinical Signs in order of importance (up to 3)</li> <li>10. Duration of signs (0-3 days, 4 days-2 weeks, &gt;2 weeks),</li> <li>11. No. Affected, No. Dead by date of submission</li> <li>12. Have there been previous submissions for this disease incident, if so - references.</li> <li>13. Unusual signs?</li> </ol>
Carcases Submitted	<ol style="list-style-type: none"> <li>14. Number and type of Carcase (live animals or dead) in the submission</li> </ol>

## Data Collected at Reporting

Data Area	Required Items
Diagnoses	<ol style="list-style-type: none"> <li>1. Appropriate VIDA code (or codes) for the disease found, or if no diagnosis, the undiagnosed syndrome.</li> <li>2. If undiagnosed, whether this is because of limited testing, or despite reasonable testing, and a further code to provide more detail to explain the circumstances (code list will be provided)</li> </ol>
Tests Performed	<ol style="list-style-type: none"> <li>3. Test identifiers for all the tests performed on materials from the PME.</li> <li>4. If tests are not performed by APHA, the Providers shall provide a list of the test codes that will be used. Species Expert Groups will then consult with Providers to establish which of these tests are key to diagnoses of the main diseases tracked for surveillance purposes. This data is important because counts of Carcases subjected to these key tests form the basis for disease trend denominators in VIDA.</li> </ol>
Detailed clinical History	<p>The expectation is that the following information will form part of the history, contained in the diagnostic report.</p> <ul style="list-style-type: none"> <li>• Whether the animal(s) died or were euthanased</li> <li>• Relevant information from previous APHA submissions</li> <li>• It may be appropriate to indicate the reason for submission, if not self-evident. This is particularly important for welfare submissions as detailed in VISI EDW256. It may also be appropriate for diagnostic submissions, for example an animal may be found dead but submitted to investigate the cause of coughing or wasting.</li> <li>• If the investigation is to be deliberately limited in any way, this should be indicated e.g. this submission was made only to investigate possible involvement of Schmallenberg virus infection.</li> <li>• Other relevant details: selected further detail is useful if it adds to the understanding of the case, thus the following details may be considered for inclusion: <ul style="list-style-type: none"> <li>• vaccinations/treatments - routine and in response to the clinical signs</li> <li>• feed constituents and regime</li> <li>• pasture management</li> <li>• animal flow - single or multi age, single or multi source</li> <li>• breeding methods/breeding stock replacement</li> <li>• recent interventions e.g. movements, debeaking</li> <li>• recently purchased, been to a show, recent introductions onto premises etc.</li> </ul> </li> </ul>

## **Annex C to the Specification – Surveillance Data Collection**

Due to the size of this data, the Provider will be granted access to the secure central location where it is stored before the Contract Commencement Date.

## SCHEDULE 2 - PRICING

Code	Description – Type of Quality Assured	Payable by the Authority	Max fee payable by PVS (not including disposal charges)
TC0001A	PME: Farmed poultry and game birds older than 2 weeks and farmed rabbits	██████	██████
TC0001B (Batch)	Up to 5		██████
TC0002A	PME: Sheep, goats, deer and pigs	██████	██████
TC0002B (Batch)	Up to 3		██████
TC0003	PME: Cattle over 6 months	██████	██████
TC0011	Sheep/goat and pig abortion - fetus(es) +/- placenta - from 1 dam	██████	██████
TC0012 to be used as a batch charge to PVS	Sheep/goat and pig abortion - fetus(es) +/- placenta - from 2 dams		██████
TC0015	Cattle & Other farmed species abortion, fetus(es) +/- placenta - from 1 dam	██████	██████
TC0017A	PME: Neonatal (less than 1 week) sheep, pigs, goats	██████	██████
TC0017B (Batch)	Up to 3		██████
TC0020	PME: Camelids	██████	██████
TC0021A	PME: Farmed poultry and game birds up to 2 weeks old	██████	██████
TC0021B (Batch)	Up to 10		██████
TC0022A	PME: Calves (up to 6 months), camelids (up to 12 months)	██████	██████
TC0022B (Batch)	Up to 3		██████

- Pricing will be reviewed by APHA on an annual basis.
- The approximate annual budget specific to the Provider is: £26,605.00. Any variance to the budget must be agreed in writing with APHA.

# SCHEDULE 3 - CHANGE CONTROL

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

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

IT IS AGREED as follows

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

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

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

# **SCHEDULE 4 - COMMERCIALY SENSITIVE INFORMATION**

**NOT USED**

# SCHEDULE 5 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. This Schedule shall be completed by the Authority, who may take account of the view of the Provider, however the final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.
2. The contact details of the Authority Data Protection Officer are:  

3. The contact details of the Provider Data Protection Officer are:  

4. The Provider shall comply with any further written instructions with respect to processing by the Authority.
5. Any such further instructions shall be incorporated into this Schedule.

Data Processing Descriptor	Narrative
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Provider is the Processor in accordance with Clause E2.1.
Subject matter of the processing	Collection and reporting of data from PME and disease investigations of Animals for the purpose of accumulation of surveillance intelligence.
Duration of the processing	The Initial Contract Period and for any Extension period.
Nature and purposes of the processing	The nature of the processing is collection, recording and electronic storage of diagnosis data on the Authority's Assure database which feeds into the Authority's Laboratory Information Management System (LIMS) – diagnosis data is used for surveillance purposes.
Type of Personal Data	Farmer name and farm address. Veterinary staff (reporting PVS).

Categories of Data Subject	Farmers and Veterinary staff (PVS).
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p>The data will be retained for a period of 6 years after the end of the Contract (including any Extensions). After the end of this period, all data will be securely returned to the Controller if requested, or securely destroyed or deleted in accordance with the Contract.</p>

# **SCHEDULE 6 - NON DISCLOSURE AGREEMENT**

**NOT USED**

# **SCHEDULE 7 - PROVIDER AND THIRD PARTY SOFTWARE**

**NOT USED**

# **SCHEDULE 8 - SECURITY REQUIREMENTS, POLICY AND PLAN**

**NOT USED**

## SCHEDULE 9 – BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN

1. For the purposes of this Schedule 8, “**BCDR Plan**” means the Provider’s business continuity and disaster recovery plan, as may be amended from time to time.
2. The Provider shall develop, review, test, change, and maintain a BCDR Plan during the term of the Contract for use in the event of a disaster or other event (or combination of events) that might result in the loss or partial loss of availability of Services.
3. The purpose of the BCDR Plan shall be to ensure that, in the event of a disruption, howsoever caused, the Authority or Provider is able to maintain continuance of the Services. The BCDR Plan shall cater for any failure or disruption and shall address the various possible levels of failure or disruption (that is, from minimal failure through to total failure).
4. The BCDR Plan shall detail the processes and arrangements which the Provider shall follow to ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services and the recovery of the Services in the event of a disaster or other event (or combination of events) that might result in the loss or partial loss of availability of Services.
5. The Provider shall provide a copy of their BCDR Plan to the Authority or Contracting Body on request and provide details of any reviews, testing and updates taking place during the Framework Term.
6. In the event of a disaster or other event (or combination of events) that might result in the loss or partial loss of availability of Services, the Provider shall immediately invoke the BCDR Plan (and shall inform the Authority promptly of such invocation).