



Department
for Environment
Food & Rural Affairs

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██████████
XLVet UK Ltd
Carlisle House,
Townhead Road,
Dalston, Carlisle
CA5 7JF

Our ref: 36063
Date: 17th June 2022

Dear ██████████,

Award of contract for the supply of Veterinary Surgeons to Orkney

Following your proposal to APHA for the supply of veterinary surgeons to Orkney, we are pleased to award this contract to you.

This letter (Award Letter) sets out the terms of the contract between APHA as the Customer and XLVet UK Ltd as the Contractor for the provision of the Services. Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions of contract set out in Annex 1 to this Award Letter (the “**Conditions**”). In the event of any conflict between this Award Letter and the Conditions, this Award Letter shall prevail. Please do not attach any Contractor terms and conditions to this Award Letter as they will not be accepted by the Customer and may delay the conclusion of the Agreement.

For the purposes of the Agreement, the Customer and the Contractor agree as follows:

- 1) The Services shall be performed on Orkney.
- 2) The charges for the Services shall be as set out in Schedule three (3).
- 3) The specification of the Services to be supplied is as set out in Schedule two (2).
- 4) The Term shall commence on 20th June 2022 and the Expiry Date shall be 2nd October 2022 unless extended or subject to early termination.

5) The address for notices of the Parties are:

Customer

Contract Management Team
Worcestershire County Hall
Spetchley Road
Worcester
WR5 2NP

Attention: [REDACTED]

Email: [REDACTED]

Contractor

XLVet UK Ltd
Carlisle House, Townhead Road,
Dalston, Carlisle
CA5 7JF

Attention: [REDACTED]

Email: [REDACTED]

6) The Customer may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Contractor shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Services, relevant to the work of the Customer, or is of a type otherwise advised by the Customer (each such conviction a “**Relevant Conviction**”), or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

Payment

All invoices should be sent, quoting a valid purchase order number (PO Number), to: APHA – accounts-payable.apha@sscl.gov.uk or Shared Services Connected Limited, PO Box 790, Phoenix House, Celtic Springs Business Park, Newport, Gwent, NP10 8FZ. Within 10 Working Days of receipt of your acceptance of this letter via Bravo, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

To avoid delay in payment it is important that invoices are compliant and that they include a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Customer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to accounts-payable.apha@sscl.gov.uk or by telephone 0845 603 7262 between 09:00-17:00 Monday to Friday.

Liaison

For general liaison your contact will continue to be [REDACTED].

We thank you for your co-operation to date and look forward to forging a successful working relationship resulting in a smooth and successful supply of the Services.

Acceptance of the award of this contract will be made by electronic signature carried out in accordance with the 1999 EU Directive 99/93 (Community framework for electronic signatures) and the UK Electronic Communications Act 2000. Acceptance of the offer

comprised in this Agreement must be made within 7 days from the date of this Award Letter and the Agreement is formed on the date on which the Contractor communicates acceptance on the Customer's electronic contract management system ("Bravo"). No other form of acknowledgement will be accepted.

Please remember to quote the reference number above in any future communications relating to this contract

Yours sincerely,


Senior Category Officer
DEFRA Group Commercial





Department
for Environment
Food & Rural Affairs

Annex One

Short Form Contract Contract for Veterinary Surgeons for Orkney

Project 36063 (ecm_65047)

June 2022

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1. Interpretation

1.1 In these terms and conditions:

Term	Description
“Agreement”	means the contract between (i) the Customer acting as part of the Crown and (ii) the Contractor constituted by the Contractor’s acceptance of the Award Letter via Bravo;
“AHWI”	means the local authority animal health inspector;
“AI”	means avian influenza;
“APHA”	means the Animal and Plant Health Agency;
“Authority”	means Defra, the Department for the Environment, Food and Rural Affairs;
“Award Letter”	means the letter from the Customer to the Contractor printed above these terms and conditions;
“Bravo”	means the Customer’s electronic contract management system;
“Central Government Body”	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: Government Department; Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); Non-Ministerial Department; or Executive Agency;
“Charges”	means the charges for the Services as specified in the Award Letter;
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“CCN”	means Contract Change Note;

“Contractor”	means the person named as Contractor in the Award Letter;
“Controller”	has the meaning given in the GDPR;
“Customer”	means the person identified in the letterhead of the Award Letter;
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, 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;
“DPA 2018”	means the Data Protection Act 2018;
“EDT”	means Eligible Down Time;
“Expiry Date”	means the date for expiry of the Agreement as set out in the Award Letter;
“FOIA”	means the Freedom of Information Act 2000;
“GDPR”	means the General Data Protection Regulation (Regulation (EU) 2016/679);
“Information”	has the meaning given under section 84 of the FOIA;
“Key Personnel”	means any persons specified as such in the Award Letter, Schedule One (1) or otherwise notified as such by the Customer to the Contractor in writing;

“KPI”	means 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);
“Party”	the Contractor or the Customer (as appropriate) and “Parties” shall mean both of them;
“Personal Data”	has the meaning given in the GDPR;
“Personal Data Breach”	has the meaning given in the GDPR;
“Premises”	means the emergency Livestock lairage facility. Including the site itself and any associated facilities;
“Processor”	has the meaning given in the GDPR;
“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;
“Purchase Order Number”	means the Customer’s unique number relating to the order for Goods to be supplied by the Contractor to the Customer in accordance with the terms of the Agreement;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“RPE”	means Respiratory Protective Equipment;
“Services”	means the services to be supplied by the Contractor to the Customer under the Agreement;

“Specification”	means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter;
“SSPCA”	means Scottish Society for the Protection of Cruelty to Animals;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor of the Contractor engaged in the performance of the Contractor’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where applicable, the Customer’s procedures for the vetting of personnel as provided to the Contractor from time to time;
“Sub-processor”	means any third party appointed to process Personal Data on behalf of the Contractor related to this Agreement;
“TB”	means Tuberculosis;
“Term”	means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with Clause 4.2 or terminated in accordance with the terms and conditions of the Agreement;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“VRA”	means Veterinary Risk Assessment;
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.
“Working Hours”	means 08:00 to 17:00 Monday to Friday, excluding Public Holidays;

1.2 In these terms and conditions, unless the context otherwise requires:

1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;

1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;

1.2.3 the headings to the clauses of these terms and conditions are for information only and

do not affect the interpretation of the Agreement;

- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word 'including' shall be understood as meaning 'including without limitation'.

2. Basis of Agreement

- 2.1 The Award Letter constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the Contractor on receipt by the Customer of the Contractor's notification of acceptance via Bravo within [7] days of the date of the Award Letter.

3. Supply of Services

- 3.1 In consideration of the Customer's agreement to pay the Charges, the Contractor shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Contractor shall:
 - 3.2.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
 - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Contractor's industry, profession or trade;
 - 3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with the Agreement;
 - 3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
 - 3.2.5 comply with all applicable laws; and
 - 3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 3.3 The Customer may by written notice to the Contractor at any time request a variation to the scope of the Services. In the event that the Contractor agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Contractor.

4. Term

- 4.1 The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Customer may extend the Agreement for a period of up to two (2) months by giving not less than 10 Working Days' notice in writing to the Contractor prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

5. Charges, Payment and Recovery of Sums Due

- 5.1 The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Contractor in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Services.
- 5.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Contractor a sum equal to the VAT chargeable in respect of the Services.
- 5.3 The Contractor shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.4 In consideration of the supply of the Services by the Contractor, the Customer shall pay the Contractor the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.6 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

- 5.7 Where the Contractor enters into a sub-contract, the Contractor shall include in that sub-contract:
- 5.7.1 provisions having the same effects as clauses 5.3 to 5.6 of this Agreement; and
 - 5.7.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.7 of this Agreement.
- 5.8 In this clause 5.8, “sub-contract” means a contract between two or more Contractors, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 5.9 If any sum of money is recoverable from or payable by the Contractor under the Agreement (including any sum which the Contractor is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Contractor under the Agreement or under any other agreement or contract with the Customer. The Contractor shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

6. Premises and equipment

- 6.1 If necessary, the Customer shall provide the Contractor with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer’s premises by the Contractor or the Staff shall be at the Contractor’s risk.
- 6.2 If the Contractor supplies all or any of the Services at or from the Customer’s premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Contractor shall vacate the Customer’s premises, remove the Contractor’s plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer’s premises in a clean, safe and tidy condition. The Contractor shall be solely responsible for making good any damage to the Customer’s premises or any objects contained on the Customer’s premises which is caused by the Contractor or any Staff, other than fair wear and tear.
- 6.3 If the Contractor supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer’s premises the Contractor shall, and shall procure that all Staff shall, comply with all the Customer’s security requirements.

- 6.5 Where all or any of the Services are supplied from the Contractor's premises, the Contractor shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Contractor and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 The Contractor shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Contractor or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Contractor or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

7. Staff and Key Personnel

- 7.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Contractor:
- 7.1.1 refuse admission to the relevant person(s) to the Customer's premises;
 - 7.1.2 direct the Contractor to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 7.1.3 require that the Contractor replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,
- and the Contractor shall comply with any such notice.
- 7.2 The Contractor shall:
- 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
 - 7.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
 - 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
- 7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

- 7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

8. Assignment and sub-contracting

- 8.1 The Contractor shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Contractor shall be responsible for the acts and omissions of its sub- contractors as though those acts and omissions were its own.
- 8.2 Where the Customer has consented to the placing of sub-contracts, the Contractor shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.
- 8.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Contractor provided that such assignment, novation or disposal shall not increase the burden of the Contractor's obligations under the Agreement.

9. Intellectual Property Rights

- 9.1 All intellectual property rights in any materials provided by the Customer to the Contractor for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Contractor a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Contractor to perform its obligations under the Agreement.
- 9.2 All intellectual property rights in any materials created or developed by the Contractor pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Contractor. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the Contractor by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 9.3 The Contractor hereby grants the Customer:
- 9.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and

9.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:

- a. any intellectual property rights vested in or licensed to the Contractor on the date of the Agreement; and
- b. any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

9.4 The Contractor shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Contractor or any Staff.

10. Governance and Records

10.1. The Contractor shall:

10.1.1. attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and

10.1.2. submit progress reports to the Customer at the times and in the format specified by the Customer.

10.2. The Contractor shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Contractor shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

11. Confidentiality, Transparency and Publicity

11.1. Subject to clause 11.2, each Party shall:

- 11.1.1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
- 11.1.2. not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.
- 11.2. Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:
 - 11.2.1. where disclosure is required by applicable law or by a court of competent jurisdiction;
 - 11.2.2. to its auditors or for the purposes of regulatory requirements;
 - 11.2.3. on a confidential basis, to its professional advisers;
 - 11.2.4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
 - 11.2.5. where the receiving Party is the Contractor, to the Staff on a need to know basis to enable performance of the Contractor's obligations under the Agreement provided that the Contractor shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Contractor's confidentiality obligations under the Agreement; and
 - 11.2.6. where the receiving Party is the Customer:
 - a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;
 - b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
 - c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
 - d) in accordance with clause 12.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 11.

- 11.3. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Contractor hereby gives its consent for the Customer to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Contractor to

inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

- 11.4. The Contractor shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

12. Freedom of Information

- 12.1 The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
 - 12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
 - 12.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
 - 12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 12.2 The Contractor acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Contractor or the Services (including commercially sensitive information) without consulting or obtaining consent from the Contractor. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Contractor or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

13. Protection of Personal Data and Security of Data

- 13.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 1. The only processing that the Contractor is authorised to do is listed in Schedule 1 by the Customer and may not be determined by the Contractor.
- 13.2. The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 13.3. The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, 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.
- 13.4. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- a. process that Personal Data only in accordance with Schedule 1 unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer 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 Customer may reasonably reject (but failure to reject shall not amount to approval by the Customer 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 Agreement (and in particular Schedule 1);
 - 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:
 - 1. are aware of and comply with the Contractor's duties under this clause;
 - 2. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - 3. 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 Customer or as otherwise permitted by this Agreement; and
 - 4. 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 Customer has been obtained and the following conditions are fulfilled:
 - i. the Customer or the Contractor 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 Customer;
 - ii. the Data Subject has enforceable rights and effective legal remedies;
 - iii. the Contractor 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 Customer in meeting its obligations); and
 - iv. the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - e. at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
- 13.5. Subject to clause 13.6 the Contractor shall notify the Customer immediately if, in relation to any Personal Data processed in connection with its obligations under this Agreement, 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.
- 13.6. The Contractor's obligation to notify under clause 13.5 shall include the provision of further information to the Customer in phases, as details become available.
- 13.7. Taking into account the nature of the processing, the Contractor shall provide the Customer 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 Agreement and any complaint, communication or request made under Clause 13.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- a. the Customer with full details and copies of the complaint, communication or request;
 - b. such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - c. the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - d. assistance as requested by the Customer following any Data Loss Event;
 - e. assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 13.8. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 13. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- a. the Customer determines that the processing is not occasional;
 - b. the Customer 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 Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 13.9. The Contractor shall allow for audits of its Personal Data processing activity by the Customer or the Customer's designated auditor.
- 13.10. Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.

- 13.11. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- a. notify the Customer in writing of the intended Sub-processor and processing;
 - b. obtain the written consent of the Customer;
 - c. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 13 such that they apply to the Sub-processor; and
 - d. provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 13.12. The Contractor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 13.13. The Customer 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 Agreement).
- 13.14. The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Officer.
- 13.15. When handling Customer data (whether or not Personal Data), the Contractor shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Contractor from time to time.
- 13.16. This clause 13 shall apply during the Term and indefinitely after its expiry.

14. Liability

- 141 The Contractor shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 142 Subject always to clauses 14.3 and 14.4:
- 1421 the aggregate liability of the Contractor in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including

negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Contractor; and

1422 except in the case of claims arising under clauses 9.4 and 18.3, in no event shall the Contractor be liable to the Customer for any:

- a) loss of profits;
- b) loss of business;
- c) loss of revenue;
- d) loss of or damage to goodwill;
- e) loss of savings (whether anticipated or otherwise); and/or
- f) any indirect, special or consequential loss or damage.

143 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

1431 death or personal injury caused by its negligence or that of its Staff;

1432 fraud or fraudulent misrepresentation by it or that of its Staff; or

1433 any other matter which, by law, may not be excluded or limited.

144 The Contractor's liability under the indemnity in clause 9.4 and 18.3 shall be unlimited.

15. Force Majeure

15.1 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

16. Termination

16.1 The Customer may terminate the Agreement at any time by notice in writing to the Contractor to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.

16.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Contractor with immediate effect if the Contractor:

- 1621 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
- 1622 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
- 1623 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Contractor receiving notice specifying the breach and requiring it to be remedied;
- 1624 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
- 1625 breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17;
- 1626 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Contractor (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Contractor's assets or business, or if the Contractor makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction; or
- 1627 fails to comply with legal obligations in the fields of environmental, social or labour law.
- 163 The Contractor shall notify the Customer as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.
- 164 The Contractor may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 165 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 16.6, 17.4, 18.3, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 166 Upon termination or expiry of the Agreement, the Contractor shall:
- 166.1 give all reasonable assistance to the Customer and any incoming Contractor of the Services; and
- 166.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

17. Compliance

- 17.1 The Contractor shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Contractor in the performance of its obligations under the Agreement.
- 17.2 The Contractor shall:
- 17.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and
- 17.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 17.3 The Contractor shall:
- 17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Contractor from time to time; and
- 17.3.2 take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.
- 17.4 The Contractor shall supply the Services in accordance with the Customer's environmental policy as provided to the Contractor from time to time.
- 17.5 The Contractor shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
- 17.5.1 the Official Secrets Acts 1911 to 1989; and
- 17.5.2 section 182 of the Finance Act 1989.

18. Prevention of Fraud and Corruption

- 18.1 The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 18.2 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Contractor (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

- 183 If the Contractor or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:
- 1831 terminate the Agreement and recover from the Contractor the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
- 1832 recover in full from the Contractor any other loss sustained by the Customer in consequence of any breach of this clause.

19. Dispute Resolution

- 191 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 192 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 193 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

20. General

- 201 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 202 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 203 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 204 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of

any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

- 205 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 206 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 207 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 208 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

21. Notices

- 21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 21.3 Notices under clauses 15 (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.

22. Governing Law and Jurisdiction

- 22.1 The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

SCHEDULE 1

PROCESSING, PERSONAL DATA AND DATA SUBJECTS

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

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

██████████
████████████████████
4. The Contractor shall comply with any further written instructions with respect to processing by the Customer.
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 Customer is the Controller and the Contractor is the Processor in accordance with Clause 13.1.
Subject matter of the processing	The processing is needed in order to ensure that the Processor can effectively deliver the Contract to provide veterinary surgeons to cover routine business as usual Government veterinary work in Orkney.
Duration of the processing	For the duration of the Contract and any enacted extensions.
Nature and purposes of the processing	The nature of the processing includes collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) for the purpose of providing effective veterinary Services, as required by APHA.

Type of Personal Data	Details that may identify veterinary personnel, animal keepers, subcontractors or any other personnel involved in the delivery of the contract through: Names, addresses, telephone numbers, images, pay, NI number etc.
Categories of Data Subject	Animal keepers, Veterinary personnel and Authority contractors.
<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>On the termination of the Contract for any reason, the Contractor shall at its cost:</p> <p>(a) immediately return to the Authority all Confidential Information and Personal Data in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;</p> <p>(b) 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 Contractor is required by Law to retain the Personal Data.</p>

SCHEDULE 2

SPECIFICATION OF REQUIREMENTS

This section sets out the Customer's requirements.

1. Background to the Contracting Authority
 - 1.1 The Authority is the UK Government Department responsible for the environment, food and farming and rural affairs. The Authority's priorities are to secure a healthy natural environment; a sustainable, low-carbon economy; a thriving farming sector and a sustainable, healthy and secure food supply. Further information on the Authority can be found at:
<https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs>
 - 1.2 APHA is responsible for safe-guarding animal and plant health for the benefit of people, the environment and the economy. Amongst others, APHA engages with farmers, industry groups and the public and acts as an interface between industry and government. APHA has responsibility for applying and providing expert advice to decision makers and rapidly responding to emergencies in case of outbreak of diseases. Further information on APHA can be found at:
<https://www.gov.uk/government/organisations/animal-and-plant-health-agency>
2. **Background to Requirement**
 - 2.1 APHA requires specified named veterinary surgeons to cover routine business as usual Government veterinary work in Orkney, when APHA staff are unable to cover it. This will include pre-arranged surveillance reporting and other ad hoc more urgent work that may arise.
 - 2.2 This requirement is divided into Lots A and B, detailed below. For both Lots the work requirement will vary according to demand and will be nil in the majority of weeks. There may be a requirement to work out of normal working hours and at weekends.
 - 2.3 The location at which services are to be provided is: APHA Kirkwall Government Buildings, Tankerness Lane, Kirkwall, Orkney, KW15 1AQ.
 - 2.4.1 **Lot A – Urgent Response**
 - 2.4.1.1 Veterinary surgeon(s) required to respond to a specific incident requiring immediate or urgent attendance.
 - 2.4.1.2 APHA require urgent attendance in Orkney within the following timescales:
 - For mainland Orkney, within two (2) Working Hours of the request being raised for notifiable disease cases and within one (1) Working Day of the request being made for urgent welfare cases.
 - For outer Orkney Islands, within a time agreed with APHA of the request being raised for notifiable disease cases, and within one (1) Working Day of the request being made for urgent welfare cases.
 - 2.4.2 **Lot B – Routine Response**

2.4.2.1 Veterinary surgeon(s) required to assist APHA with business-as-usual work.

2.4.2.2 Where attendance is for a period of more than one (1) Working Day, three (3) Working Days' notice of the requirement (location and duration) will be given.

3. Key Personnel of the Contractor to be involved in the Supply of the Services

3.1 Veterinary Surgeons for Orkney for Lots A and B

■	██████████
■	██████████
■	██████████
■	██████████
■	████████████████████████████████████████
■	██████████

4. Key Tasks

4.1 Key tasks that the vet(s) will be required to carry out, to investigate animal diseases in farm livestock by undertaking on-farm and field investigations, include:

- Examining and inspecting farmed animals, to support differential diagnosis of disease;
- Conducting in-field post-mortem examinations when appropriate;
- Collecting and submitting appropriate samples for laboratory testing;
- Collecting and interpreting relevant data;
- Reporting findings and recommendations;
- Maintaining competence in this role.

5. Detailed Requirements

5.1 Lot A - The work may include:

- Diagnosis and control of notifiable diseases including euthanasing animals where necessary and taking and dispatch of samples. Specific training will be provided for individuals who may be required to carry out this work. **This work will require an immediate response – dispatch of a veterinary surgeon to a report of a suspected case of a Category A Exotic Notifiable disease (report or consultation) within two (2) Working Hours for mainland Orkney and, within a time agreed with APHA for Orkney Islands of the decision being made that a veterinary inquiry is necessary.** Completion of paperwork to target is required.
- Farm animal welfare inspections on farms, in markets, during transport or at slaughter. This may be in collaboration with the local authority animal health inspector (AHWI) or Scottish Society for the Protection of Cruelty to Animals (SSPCA) inspector or by provision of support for the local authority AHWI where a veterinary opinion is reasonably required. This work may be in response to a report of an incident. **This work will require an urgent response – visit within one (1) Working Day.** Completion of paperwork to target is required.
- Sampling of dead wild birds in Orkney as part of the Wild Bird Avian Influenza (AI) surveillance requirements. This work will be directed after Veterinary Risk

Assessment (VRA) by an APHA Veterinary Lead after notification to APHA of a die-off in the Orkney Islands. **This work is required within one (1) Working Day, depending on the VRA.** Oropharyngeal and cloacal samples and associated paperwork will be sent to a relevant laboratory as directed by the Veterinary Lead. Advice should be given to relevant individuals regarding disposal of carcasses, as directed by the APHA Veterinary Lead.

5.2 Lot B - The work may include:

- As Lot A.
- Additional veterinary tasks depending on local requirement.
- Consumer protection work including veterinary medicines, salmonellosis and other zoonoses.
- Import controls on animals and animal products.
- Export: Supervised loading of livestock.
- Provision of surveillance information when requested.
- Tuberculosis (TB): Veterinary risk assessment of movements, separation of premises from restrictions.

5.3 If an immediate response is required, the veterinary surgeon(s) nominated as Contractor for Lot A will be contacted and will deliver the Service requirement.

5.4 The veterinary surgeon(s) nominated as Lot B Contractor will then be given notice and will be expected to begin supplying the Service in three (3) Working Days' upon receipt and confirmation of notice (via email or telephone), unless agreed between the Authority and the nominated Contractor that Services could be delivered before the three (3) Working Days' notice has expired.

5.5 The Contractor for Lot A will continue to provide the Services to the Authority until that point that the Contractor for Lot B Services is available.

5.6 Detailed Requirements for Lots A and B;

5.6.1 Disease Investigation and Welfare

5.6.1.1 The vet(s) shall investigate for the presence in individual animals and herds of notifiable disease, new and re-emerging threats and other food safety incidents and zoonotic disease through quality assured inspection, examination, history taking, post mortem examination, sampling and differential diagnosis to allow assessment of likely causes and potential consequences.

5.6.1.2 The vet(s) shall carry out euthanasia of animals were necessary in accordance with appropriate policies, or to supervise this activity where others (e.g. knacker men) are involved.

5.6.1.3 The vet(s) shall carry out physical examinations of animals, records, premises, equipment and vehicles when a veterinary investigation, opinion, decision and or witness statement is required.

5.6.1.4 The vet(s) shall contribute to the diagnosing of notifiable diseases and control disease in liaison with senior APHA veterinary staff.

5.6.1.5 The vet(s) shall ensure personal decisions, advice and actions are based on evidence, take account of the relevant policy and legal frameworks and are clearly and appropriately communicated.

5.6.2 Inspection, Approval and Audit

5.6.2.1 The vet(s) shall carry out physical examinations of animals, premises, equipment and vehicles when a veterinary opinion / certification is required.

5.6.2.2 The vet(s) shall carry out import controls on animals and animal products as required by the relevant European Union (EU) / United Kingdom (UK) legislation, including investigation of possible illegal activity.

5.6.3 Incident and Disease Outbreak Response

5.6.3.1 The vet(s) shall ensure that professional skills are developed and maintained to undertake any allocated role(s) during incidents and emergency activities.

5.6.3.2 The vet(s) shall provide veterinary advice and make effective decisions at the individual / premises level in a disease emergency situation, using sound veterinary judgment and adhering to standard guidance and operating procedures where applicable.

5.6.4 Safety, Health and Wellbeing (SHaW)

5.6.4.1 The vet(s) shall undertake essential training and display leadership by establishing and championing high health and safety standards and acting as a role model.

5.6.4.2 The vet(s) shall carry out appropriate risk assessments when carrying out Services escalating risks as required.

5.6.4.3 The vet(s) shall implement APHA's Safety Health and Wellbeing policy and procedures as relevant to the role.

5.6.4.4 The vet(s) shall undertake necessary assurance activities in accordance with APHA requirements when delivering the Services.

5.6.5 Compliance and Enforcement

5.6.5.1 The vet(s) shall use veterinary expertise to provide appropriate and relevant advice at the individual premises level, and to organizations and stakeholders in relation to GB Government policies.

5.6.5.2 The vet(s) shall use veterinary expertise to support interventions as necessary, including the gathering, interpretation and presentation of evidence, appearing as a witness of fact or as a professional witness when required, and on occasions providing expert witness testimony if appropriately qualified.

5.6.5.3 The vet(s) shall have an understanding and application of legislation in line with policy and best regulatory practice in order to positively influence behaviours while minimising burdens on industry. This should include EU law and other international standards as well as the UK policy.

5.6.5.4 The vet(s) shall represent APHA, engaging with animal keepers, wider industry and operation partners to gather intelligence, and educate and influence to improve the level of understanding, compliance and safe behaviour.

5.6.6 Learning and Development

5.6.6.1 The vet(s) shall maintain appropriate veterinary expertise by undertaking and recording Continuing Professional Development.

5.6.6.2 The vet(s) shall undertake personal learning and development and contribute to organisational learning, supporting continuous improvement.

5.6.6.3 The vet(s) shall maintain a record of competence and relevant training to Royal College of Veterinary Surgeons (RCVS) and APHA standards.

5.6.7 Key Personnel

5.6.7.1 The Contractor will maintain a (pool of trained) vet(s) to be available to perform the Services throughout the course of the Contract.

5.6.8 Eligible Down Time (EDT)

5.6.8.1 Due to the variable work location, enforced downtime may be payable in some circumstances for work in locations which can be reached only by boat or plane from Orkney mainland.

5.6.8.2 EDT is calculated by adding up the time:

- spent doing the test or taking samples
- cleaning up
- writing up the test chart
- completing forms / reports
- carrying out any private veterinary work
- meal time
- travelling time on the Island

5.6.8.3 This time is then subtracted from the total time travelling to, from and spent on the island. Figures are normally calculated to the nearest five minutes.

5.6.9 Travel Expenses

5.6.9.1 Rates are inclusive of all travel and expenses and additional expenses will not be paid with the exception for work in locations which cannot be accessed without the use of boats or planes. In these cases, agreement must be reached (with APHA) prior to travel on an individual case basis.

5.6.9.2 Travel expenses for work on locations which can only be reached by boat or plane from mainland Orkney will be reimbursed from the departure point on mainland

Orkney.

- 5.6.9.3 Mainland Orkney will be considered to include all locations that can be reached without boat or plane.
- 5.6.9.4 All relevant travel expenses must be supported by original receipts and the Contractor will only be reimbursed for expenses which have actually and necessarily been incurred in the course of providing the Services.
- 5.6.9.5 Where hire cars are used the Contractor must ensure that the vehicle is suitable for the task.
- 5.6.9.6 For work on mainland Orkney, rates are inclusive of all travel and expenses and additional expenses will not be paid.

5.6.10 Equipment

- 5.6.10.1 APHA will supply Grab and Go boxes for notifiable disease case investigations to be held by the Contractor to be held at an agreed location. These will include a GPS unit. The Contractor will be responsible for maintenance of this equipment, making it available for APHA use if required. APHA will fund replacement stock for out-of-date items, batteries, etc. APHA will provide appropriate RPE for avian influenza.
- 5.6.10.2 Virus transport medium. The Contractor is responsible for maintenance of an adequate supply of in date virus transport medium – this will be supplied by APHA. The Contractor will be responsible for storage of the virus transport medium and making this available for APHA staff use if required.

5.6.11 Standards

- 5.6.11.1 The vet(s) shall be assessed by APHA Occupational Health prior to carrying out any field work. The Contractor shall ensure that their own Occupational Health assessment includes confirming immunity to Tuberculosis (TB) (either by a visible Bacillus Calmette-Guérin (BCG) scar, or documentary evidence, or a strong verbal history of having received a BCG).
- 5.6.11.2 All work carried out must comply with the latest APHA operational guidance, which was introduced as part of the APHA induction and training and will be included in pre-brief.
- 5.6.11.3 All work must be carried out prioritising high standards of health and safety and carrying out appropriate risk assessment when carrying out veterinary duties on premises, escalating risks as required.
- 5.6.11.4 All work must be carried out so that the highest standards of biosecurity are followed, and seen to be followed, at all times.

6. Performance management framework (including key performance indicators)

- 6.1 As part of the Authority's continuous drive to improve the performance of all contracts, this Performance Management Framework will be used to monitor, measure and control all aspects of the Contractor's performance of contract responsibilities.
- 6.2 The purpose of this Performance Management Framework is to set out the obligations

on the Contractor, to outline how the Contractor's performance will be evaluated and to detail the sanctions for performance failure. The Contractor is responsible for the performance of any sub-contractors.

- 6.3 Key Performance Indicators (KPIs) are essential to align Contractor performance with the requirements of the Authority 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 Agreement and seek an alternative Contractor.
- 6.4 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.
- 6.5 KPIs are set out at Annex A. 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.
- 6.6 The Authority will be entitled to refine, vary or modify the KPIs, performance standards and service credits from time to time during the Contract Term through a variation to be agreed with the Contractor using a Contract Change Note (CCN).
- 6.7 Where a KPI has a percentage measure, the Contractor's performance will be rounded to the nearest whole number.
- 6.8 The Authority will produce an annual Performance Management report, to be sent to the Contractor, detailing the Contractor's performance against KPIs. This will cover any training or deployment call-offs which have taken place during the period.
- 6.9 The Contractor will maintain their own management reports, including Issues Log, which will include detail on periodic checks to ensure quality.
- 6.10 Any performance issues highlighted in the reports will be addressed by the Contractor, who may be required to provide an improvement plan to address all issues highlighted within a week of receipt of the report. Performance management reports and KPI performance will be a key feature of any Contract Review meetings.
- 6.11 Where performance failure attributable to the Contractor is identified in the Performance Management report and relates to the KPIs then the service credit regime may apply, at the sole discretion of the Authority.

7. Service credits

- 7.1 The use of service credits is governed by the following principles:
- 7.2 Service credits sit within the wider service management approach being pursued by the Contractor and the Contracting Body. Use of service credits does not preclude any other remedy for failure of performance available to the Authority under the terms and conditions of the Contract.
- 7.3 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 associated call-off contract value (the applicable quarterly 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 Contract value (the applicable quarterly period), applied for each KPI failure
- The maximum annual service credit to be applied will be no more than 9% of the total call-off contract value.

- 7.4 The Contractor will provide the Authority with the information listed in the Specification and such other supporting information as the Authority may reasonably request in order to determine the proper application of any service credits due.
- 7.5 For services where the Contractor is paid by the Authority, service credits will be paid to the Authority as a credit note to the next invoice, or if no invoice is due within 30 days of a performance report, then the Contractor will issue a bespoke credit note to the Authority.
- 7.6 For services where the Contractor recovers costs directly, service credits will be paid to individual users of the service as a credit note to their next invoice. The Contractor will propose how the service credit amounts will be applied to each user of the service.
- 7.7 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, the Authority and the Contractor will enter into good faith discussions to review the KPIs and assess their effectiveness. The KPIs may be adjusted to ensure that they are appropriate and achievable.

KPI	Description	Measure	KPI Target	Source(s)	Service Credit Rating
KPI 1 - Service Delivery	Key Personnel deployed within required timescales (as detailed in Section 2 of the Specification)	Key Personnel attend within required timescale.	100%	APHA Policy Team	2
KPI 2 – Contract Management	Timely submission of invoices	The Contractor submits invoices in accordance with the Award Letter and Schedule Two (Pricing).	100%	APHA Finance Team	0

SCHEDULE 3

PRICES

1. The following pricing shall apply for the provision of Veterinary Surgeons to Orkney:

Lot / Requirement	Hourly Rate	Day Rate
Lot A - Report Case	████████	████████
Lot A - Urgent welfare / other	████████	████████
Lot B	████████	████████

2. The following applies for all pricing:

- All prices are exclusive of VAT.
- All prices are shown in £ Sterling (GBP).
- During training or deployment under Lot A or B, payment will be made at the hourly rate up to a maximum of seven (7) hours. Payment will be made at the day rate for periods of eight (8) to ten (10) hours.

3. All invoices shall contain or be accompanied by the following information:

- The name of the vet(s)
- Purchase order number (as advised)
- Cost Centre 10063300