

**01 FEBRUARY 2022**

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

between

**THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**

and

**PEMBROKESHIRE HOLDINGS LIMITED TA EURO FARM WALES**

## CONTENTS

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### CLAUSE

|     |                                                             |    |
|-----|-------------------------------------------------------------|----|
| 1.  | Definitions .....                                           | 1  |
| 2.  | Interpretation .....                                        | 7  |
| 3.  | Initial Contract Period .....                               | 8  |
| 4.  | Extension of Initial Contract Period .....                  | 8  |
| 5.  | Contractor's status .....                                   | 9  |
| 6.  | Customer's obligations .....                                | 9  |
| 7.  | Mistakes in Information .....                               | 9  |
| 8.  | Services.....                                               | 9  |
| 9.  | Provision and removal of Equipment .....                    | 10 |
| 10. | Key Personnel .....                                         | 11 |
| 11. | Contractor's Staff .....                                    | 12 |
| 12. | Licence to occupy Premises .....                            | 12 |
| 13. | Security of premises.....                                   | 13 |
| 14. | Property.....                                               | 13 |
| 15. | Environmental requirements .....                            | 14 |
| 16. | Health and safety .....                                     | 14 |
| 17. | Contract Price.....                                         | 15 |
| 18. | Payment and VAT.....                                        | 15 |
| 19. | Recovery of sums due .....                                  | 16 |
| 20. | Conflicts of interest .....                                 | 17 |
| 21. | Prevention of bribery .....                                 | 17 |
| 22. | Discrimination.....                                         | 19 |
| 23. | Confidentiality.....                                        | 20 |
| 24. | Official Secrets Acts 1911 to 1989 .....                    | 21 |
| 25. | Data Protection Act.....                                    | 21 |
| 26. | Freedom of Information.....                                 | 26 |
| 27. | Publicity, media and official enquiries.....                | 27 |
| 28. | Intellectual Property Rights .....                          | 27 |
| 29. | Records and audit access .....                              | 28 |
| 30. | Replacement of corrupted data .....                         | 29 |
| 31. | Remedies in the event of inadequate performance.....        | 29 |
| 32. | Rights and remedies .....                                   | 31 |
| 33. | Transfer and sub-contracting .....                          | 31 |
| 34. | Waiver .....                                                | 32 |
| 35. | Variation .....                                             | 32 |
| 36. | The Contracts (Rights of Third Parties) Act 1999 .....      | 33 |
| 37. | Severance .....                                             | 33 |
| 38. | Liability, indemnity and insurance .....                    | 34 |
| 39. | Insurances .....                                            | 36 |
| 40. | Taxation, National Insurance and employment liability ..... | 36 |
| 41. | Warranties and representations .....                        | 37 |
| 42. | Termination on insolvency and change of control .....       | 38 |
| 43. | Termination on Default.....                                 | 39 |
| 44. | Termination for convenience.....                            | 41 |

|     |                                             |    |
|-----|---------------------------------------------|----|
| 45. | Consequences of termination or expiry ..... | 41 |
| 46. | Disruption .....                            | 42 |
| 47. | Recovery on termination .....               | 43 |
| 48. | Dispute resolution .....                    | 44 |
| 49. | Force majeure .....                         | 44 |
| 50. | Entire agreement .....                      | 45 |
| 51. | Notices.....                                | 46 |
| 52. | Governing law and jurisdiction.....         | 46 |

## **ANNEX**

|          |                                                          |    |
|----------|----------------------------------------------------------|----|
| ANNEX A. | SPECIFICATION OF REQUIREMENTS AND CONTRACTOR'S LOTS..... | 48 |
| ANNEX B. | CONTRACT PRICE.....                                      | 49 |
| ANNEX C. | ORDER FORM .....                                         | 56 |
| ANNEX D. | CONTRACT CHANGE NOTICE (CCN) .....                       | 57 |
| ANNEX E. | AUTHORISED DATA PROCESSING TEMPLATE .....                | 59 |

## **PARTIES**

- (1) THE ANIMAL AND PLANT HEALTH AGENCY (APHA) at Woodham Lane, Addlestone, Surrey, KT15 3NB (**Customer**).
- (2) Pembrokeshire Holdings Limited TA Euro Farm Wales incorporated and registered in England and Wales with company number 12015434 whose registered office is at Unit 7 and 8 Withybush Industrial Estate, Haverfordwest, Pembrokeshire. Wales, SA62 4BS (**Contractor**).

## **BACKGROUND**

- (A) The Authority placed contract notice 2021-042244 on 31 August 2021 on the Find a Tender Service seeking Tenders from potential service providers for the provision of Services (divided into Lots) to itself and the Other Contracting Bodies identified in the contract notice under a framework agreement.
- (B) The Authority invited any potential service providers (including the Contractor) on 31 August 2021 to tender for the provision of management, collection, slaughter, salvage and disposal of farmed livestock for TB control purposes (Reactor Removal) services.
- (C) On the basis of the Contractor's Tender, the Authority selected the Contractor to enter a Framework Agreement to provide services to Contracting Bodies who will place Orders in accordance with the Framework Agreement.
- (D) The Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of Services and the obligations of the Contractor under the Framework Agreement.
- (E) The Customer is a Contracting Body, as specified in the FTS Notice. It has selected the Contractor to provide the Services and the Contractor is willing and able to provide the Services in accordance with the terms and conditions of this Contract.
- (F) 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").

## GENERAL PROVISIONS

### 1. DEFINITIONS

In the Contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

**Approval:** the prior written approval of the Customer.

**Auditor:** the National Audit Office or an auditor appointed by the Customer as the context requires.

**Authorised Representative:** the persons respectively designated as such by the Customer and the Contractor in the Order Form.

**Authority:** The Department for Environment, Food and Rural Affairs, being the contracting authority that established the Framework Agreement.

**Call-off Contract or Contract:** means this legally binding Contract between the Authority and the Contractor for the provision of the Services (as may be amended pursuant to clause 35.2).

**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 which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the DPA.

**Contract Period:** the period from the Service Commencement Date to:

- (a) the date of expiry set out in clause 3;
- (b) following an extension pursuant to clause 4, the date of expiry of the extended period; or
- (c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

**Contract Price:** the price (exclusive of any applicable VAT), payable to the Contractor by the Customer for the full and proper performance by the Contractor of its obligations under the Contract.

**Contract Year:** a period of 12 calendar months, commencing on the Service Commencement Date.

**Contracting Authority:** any Contracting Authority as defined in regulation 2 of the Public Contracts Regulations 2015 (*SI 2015/102*) other than the Customer.

**Contracting Body:** a Contracting Authority identified in the contract notice as a potential purchaser of Services under the Framework Agreement.

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

**Crown:** the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the Welsh Government), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf.

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

**Data Loss Event:** means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under 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:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

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

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

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

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

**Default:** any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

**Dispute Resolution Procedure:** the dispute resolution procedure in clause 9.

**Environmental Information Regulations or EIRs:** the Environmental Information Regulations 2004 (*SI 2004/3391*), together with any

guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**Equipment:** the Contractor's equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

**Fees Regulations:** the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (*SI 2004/3244*).

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

**Force Majeure:** any event or occurrence that is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including: fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (a) any industrial action occurring within the Contractor's or any Sub-Contractor's organisation; or
- (b) the failure by any Sub-Contractor to perform its obligations under any Sub-Contract.

**Framework Agreement:** the framework agreement for the provision of management, collection, slaughter, salvage and disposal of farmed livestock for TB control purposes (Reactor Removal) services between the Authority and the Contractor dated 01 February 2022.

**FTS:** The UK Government Find a Tender Service

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

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

**Initial Contract Period:** the period set out in clause 3.

**Intellectual Property Rights:** any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques,

business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the look and feel of any websites, and **Intellectual Property** shall refer to such materials.

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

**Key Personnel:** any individual identified in this Call-Off Contract as being key personnel.

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

**Month:** calendar month.

**Order:** the order placed by the Customer to the Contractor in accordance with the Framework Agreement, which sets out the description of the Services to be supplied.

**Order Form:** the document used to place an Order, referred to by the Authority as the TB161 form.

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

**Party:** the Contractor or the Customer and Parties shall mean both the Contractor and the Customer.

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

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

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

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

**Premises:** the location where the Services are to be supplied, as set out in the Order Form.

**Prohibited Act:** the following constitute Prohibited Acts:

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

**Property:** the property, other than real property, issued or made available to the Contractor by the Customer in connection with the Contract.

**Quality Standards:** the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation 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 Contractor would reasonably and ordinarily be expected to comply with (as may be further detailed in this Call-off Contract) and any other quality standards set out in the Order Form.

**Regulatory Bodies:** those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer.

**Regulations:** the Public Contracts Regulations 2015 as amended from time to time;

**Replacement Contractor:** any third party service provider appointed by the Customer to supply any services that are substantially the same as or similar to any of the Services and which the Customer receives in

substitution for any of the Services following the expiry, termination or partial termination of the Contract.

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

**Service Commencement Date:** 01 February 2022

**Services:** the provision of management, collection, slaughter, salvage and disposal of farmed livestock for TB control purposes (Reactor Removal) services to be supplied as specified in this Call-Off Contract and further detailed in the Specification of Requirements.

**Specification of Requirements:** means a statement of the Authority's Requirements as set out in Annex A.

**SQ Response:** the response to the selection questionnaire issued by the Authority and submitted by the Contractor on 14/07/17 (Lot 1) and 14/10/17 (Lots 3, 4 and 5).

**Staff:** all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor's agents, Contractors and Sub-Contractors used in the performance of its obligations under the Contract.

**Staff Vetting Procedures:** the Customer's procedures and departmental policies for the vetting of personnel for:

- (a) eligibility to work in the UK;
- (b) the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989;

**Sub-Contract:** any contract between the Contractor and a third party under which the Contractor agrees to source the provision of any of the Services from that third party.

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

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

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

**Tender:** the document(s) submitted by the Contractor to the Authority for admission onto the Framework Agreement.

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

**Variation:** has the meaning given to it in clause 35.

**VAT:** value added tax in accordance with the provisions of the Value Added Tax Act 1994.

**Working Day:** any day other than a Saturday or Sunday or public holiday in England, Wales and Scotland.

## 2. **INTERPRETATION**

The interpretation and construction of the Contract shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (h) the Schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract shall include the Schedules;

- (i) references in the Contract to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to the Contract so numbered; and
- (j) references in the Contract to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to the Contract so numbered.
- (k) any reference in this Contract which immediately before the IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to Section 1A of the European Union (Withdrawal) Act 2018) is a reference to (as it has effect from time to time):
  - i. any EU regulation, EU decision, EU tertiary legislation or provision of the European Economic Area (“EEA”) agreement (“EU References”) which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
  - ii. any EU institution or EU authority or other such EU body shall be read on and after IP Completion Day as a reference to the UK institution, authority or body to which its functions were transferred.

### **3. INITIAL CONTRACT PERIOD**

The Contract shall take effect on the Service Commencement Date and shall expire automatically after 12 calendar months, unless it is otherwise terminated in accordance with the provisions of the Contract.

### **4. EXTENSION OF INITIAL CONTRACT PERIOD**

The Customer may, by giving written notice to the Contractor not less than 1 Month (before the last day of the Initial Contract Period, extend the Contract for any further period or periods as permitted by the FTS Notice. The provisions of the Contract will apply throughout any such extended period.

**5. CONTRACTOR'S STATUS**

At all times during the Contract Period the Contractor shall be an independent service 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 except as expressly permitted by the terms of the Contract.

**6. CUSTOMER'S OBLIGATIONS**

Except as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation on, or in any other way fetter or constrain, the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Customer to the Contractor.

**7. MISTAKES IN INFORMATION**

The Contractor shall be responsible for the accuracy of all drawings, documents and information supplied to the Customer by the Contractor in connection with the supply of the Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein.

**SUPPLY OF SERVICES**

**8. SERVICES**

8.1 The Contractor shall supply the Services during the Contract Period in accordance with the Customer's requirements as set out in the Contract in consideration for the payment of the Contract Price. The Customer may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.

8.2 The Contractor acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer before submitting its Tender so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

8.3 The Contractor shall:

- (a) at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
  - (b) at all times perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 8.4 The Contractor shall ensure that all Staff supplying the Services shall 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.
- 8.5 Subject to the Customer providing Approval in accordance with clause 9, timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

**9. PROVISION AND REMOVAL OF EQUIPMENT**

- 9.1 Unless otherwise stated in the Order Form, the Contractor shall provide all the Equipment necessary for the supply of the Services.
- 9.2 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior written Approval.
- 9.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and responsibility and the Customer shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Customer's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- 9.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 9.5 The Contractor shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
  - (a) remove from the Premises any Equipment that in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with the Contract; and
  - (b) replace such item with a suitable substitute item of Equipment.

- 9.6 On completion of the Services, the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than reasonable wear and tear, which is caused by the Contractor or any Staff.

## **STAFFING**

### **10. KEY PERSONNEL**

- 10.1 The Parties have agreed to the appointment of the Key Personnel detailed within this clause. The Contractor shall, and shall procure that any Sub-Contractor shall, obtain the prior Approval of the Customer before removing or replacing any Key Personnel during the Contract Period, and, where possible, at least one Months' written notice must be provided by the Contractor of its intention to replace Key Personnel.

Key Personnel for the Contractor:

- [REDACTED] (Service Manager)
- [REDACTED] (Deputy Service Manager)

Key Personnel for the Customer:

- [REDACTED] (Contract Manager)
- [REDACTED] (Senior Responsible Officer)

- 10.2 The Customer shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Contractor or Sub-Contractor, but the Customer may interview the candidates for Key Personnel positions before they are appointed.
- 10.3 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Customer. The Contractor shall ensure that the role of any Key Personnel is not vacant for any longer than ten Working Days and that any replacement shall have suitable qualifications and experience and be fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

- 10.4 The Customer may also require the Contractor to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

## **11. CONTRACTOR'S STAFF**

- 11.1 The Contractor's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements and sustainability requirements) as may be in force and notified to the Contractor from time to time for the conduct of personnel when at or within the boundaries of those Premises.
- 11.2 The Contractor warrants that it has complied with the Staff Vetting Procedures in respect of all Staff employed or engaged by the Contractor at the Service Commencement Date and that it shall not employ or engage any person in the provision of the Services who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Services.

## **PREMISES**

### **12. ACCESS TO PREMISES**

- 12.1 The Customer shall take all reasonable steps to ensure that the Contractor is given access to any land or third party Premises which is necessary to enable the Contractor to perform the Services.
- 12.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Customer may reasonably request.
- 12.3 Without prejudice to clause 11.1, the Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of the Premises notified to it by the Customer, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than reasonable wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

- 12.4 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted under the Contract, the Customer retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

### **13. SECURITY OF PREMISES**

- 13.1 The Contractor shall be responsible for maintaining the security of the slaughterhouse at which the Services are to be provided and all assets and information used in performance of the Services in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Customer while on the Premises and shall ensure that all Staff comply with such requirements.
- 13.2 On request, the Contractor shall:
- (a) provide the Customer with copies of its written security procedures; and
  - (b) on reasonable request, afford the Customer an opportunity to inspect its physical security arrangements.

### **14. PROPERTY**

- 14.1 Where the Customer issues Property to the Contractor, such Property shall be and remain the property of the Customer and the Contractor irrevocably licences the Customer and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and at all times the Contractor shall possess the Property as fiduciary agent and bailee of the Customer. The Contractor shall take all reasonable steps to ensure that the title of the Customer to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Customer's request, store the Property separately and ensure that the Property is clearly identifiable as belonging to the Customer.
- 14.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Customer otherwise within five Working Days of receipt.

- 14.3 The Contractor 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 prior Approval.
- 14.4 The Contractor shall ensure the security of all the Property while in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Customer's reasonable security requirements as required from time to time.
- 14.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding reasonable wear and tear), unless such loss or damage was caused by the Customer's Default. The Contractor shall inform the Customer within two Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

**15. ENVIRONMENTAL REQUIREMENTS**

The Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Customer's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

**16. HEALTH, SAFETY AND WELLBEING**

- 16.1 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 Contract. The Customer shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises from which livestock are collected and which may affect the Contractor in the performance of its obligations under the Contract.
- 16.2 While on the Premises, the Contractor shall comply with any health safety and wellbeing measures notified by the Customer in respect of Staff and other persons working there.
- 16.3 The Contractor shall notify the Customer immediately in the event of any health and safety incident, near misses or material hazards occurring in the performance of its obligations under the Contract it causes any personal injury or damage to property which could give rise to personal injury.

- 16.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health safety and wellbeing, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.
- 16.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request.

## **PAYMENT AND CONTRACT PRICE**

### **17. CONTRACT PRICE**

- 17.1 In consideration of the Contractor's performance of its obligations under the Contract, the Customer shall pay the Contract Price in accordance with clause 18.
- 17.2 The Customer shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

### **18. PAYMENT AND VAT**

- 18.1 The Contractor shall ensure that each invoice is submitted in accordance with the payment profile set out in the Specification of Requirements.
- 18.2 The Customer shall pay the Contractor the charges within 30 days of receipt by the Customer of a valid, undisputed invoice, in cleared funds to the Contractor's account stated in the Order Form.
- 18.3 Where the Customer fails to comply with *clause 18.2*, the invoice shall be regarded as valid and undisputed 14 days after the date on which it is received by the Customer.
- 18.4 Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:
- (a) provisions having the same effect as *clause 18.2* to *clause 18.4* of this agreement; and

- (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as *clause 18.2* to *clause 18.4* of this agreement.

In this *clause 18.4*, "Sub-Contract" means a contract between two or more Contractors, at any stage of remoteness from the Customer 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.

- 18.5 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.
- 18.6 The Contractor shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this *clause 18.6* shall be paid by the Contractor to the Customer not less than five Working Days before the date on which the tax or other liability is payable by the Customer.
- 18.7 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under *clause 43* for failure to pay undisputed sums of money.

## **19. RECOVERY OF SUMS DUE**

- 19.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Customer.
- 19.2 Any overpayment by either Party, whether of the Contract 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.
- 19.3 The Contractor shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Contractor.

- 19.4 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.

## **STATUTORY OBLIGATIONS AND REGULATIONS**

### **20. CONFLICTS OF INTEREST**

- 20.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or Staff and the duties owed to the Customer under the provisions of the Contract.
- 20.2 The Contractor shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in clause 20.1 above arises or is reasonably foreseeable.
- 20.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Contractor and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

### **21. PREVENTION OF BRIBERY**

- 21.1 The Contractor:
- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Contract commit a Prohibited Act; and
  - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that an agreement has been reached to that effect, in connection with the execution of this

Contract, excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of this Contract.

21.2 The Contractor shall:

- (a) if requested, provide the Customer with any reasonable assistance, at the Customer's reasonable cost, to enable the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
- (b) within 30 Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing (such certification to be signed by an officer of the Contractor) compliance with this clause 21 by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Contractor shall provide such supporting evidence of compliance as the Customer may reasonably request.

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

21.4 If any breach of clause 21.1 is suspected or known, the Contractor must notify the Customer immediately.

21.5 If the Contractor notifies the Customer that it suspects or knows that there may be a breach of clause 21.1, the Contractor must respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit books, records and any other relevant documents. This obligation shall continue for 6 years following the expiry or termination of this Contract.

21.6 The Customer may terminate this Contract by written notice with immediate effect if the Contractor, its Staff or Sub-Contractors (in all cases whether or not acting with the Contractor's knowledge) breaches clause 21.1. In determining whether to exercise the right of termination under this clause 21.6, the Customer shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, Sub-Contractor or Contractor not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting:

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

21.7 Any notice of termination under clause 21.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Customer believes has committed the Prohibited Act; and
- (c) the date on which this Contract will terminate.

21.8 Despite clause 48, any dispute relating to:

- (a) the interpretation of clause 21; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Customer and its decision shall be final and conclusive.

21.9 Any termination under clause 21 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer.

## 22. **DISCRIMINATION**

22.1 The Contractor shall 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 Contractor 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.

- 22.2 The Contractor shall 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).

## **INFORMATION**

### **23. CONFIDENTIALITY**

- 23.1 Subject to clause 23.2, the parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

- 23.2 Clause 23.1 shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that clause 26 shall apply to any disclosures required under the FOIA or the Environmental Information Regulations;
- (b) that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Contract;
- (c) that is reasonably required by the Customer;
- (d) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 23.1;
- (e) by the Customer of any document to which it is a party and which the parties to this Contract have agreed contains no Confidential Information;
- (f) to enable a determination to be made under clause 48;
- (g) which is already lawfully in the possession of the receiving party, before its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
- (h) by the Customer to any other department, office or agency of the government, provided that the Customer informs the recipient of any duty of confidence owed in respect of the Confidential Information; and
- (i) by the Customer relating to this Contract and in respect of which the Contractor has given its prior written consent to disclosure.

- 23.3 On or before the expiry of the Contract, the Contractor shall ensure that all documents and/or computer records in its possession, custody or control which contain Confidential Information or relate to personal

information of the Authorities' employees, rate-payers or service users, are delivered up to the Customer or securely destroyed.

**24. OFFICIAL SECRETS ACTS 1911 TO 1989**

24.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:

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

24.2 In the event that the Contractor or its Staff fail to comply with this clause, the Customer reserves the right to terminate the Contract by giving notice in writing to the Contractor.

**25. DATA PROTECTION ACT**

25.1 The Customer is the Controller and the Contractor is the Processor for the purposes of the Data Protection Legislation.

25.2 The Contractor must process Personal Data and ensure that Staff process Personal Data only in accordance with this Contract.

25.3 The Contractor shall take all reasonable measures relating to the security of processing which are required pursuant to Article 32 of the UK GDPR including, without limitation, those security measures specified in this clause 15.

25.4 The Contractor must not remove any ownership or security notices in or relating to the Customer Data.

25.5 The Contractor must make accessible back-ups of all Customer Data, stored in an agreed off-site location and send the Customer copies every six Months.

25.6 The Contractor must ensure that any Contractor system holding any Customer Data, including back-up data, is a secure system that complies with the security requirements specified in writing by the Customer.

25.7 If at any time the Contractor suspects or has reason to believe that the Customer Data provided under the Contract is corrupted, lost or sufficiently degraded, then the Contractor must notify the Customer and immediately suggest remedial action.

- 25.8 If the Customer Data is corrupted, lost or sufficiently degraded so as to be unusable the Customer may either or both:
- (a) tell the Contractor to restore or get restored Customer Data as soon as practical but no later than five Working Days from the date that the Customer receives notice, or the Contractor finds out about the issue, whichever is earlier;
  - (b) restore the Customer Data itself or using a third party.
- 25.9 The Contractor must pay each Party's reasonable costs of complying with clause 25.8 unless the Customer is at fault.
- 25.10 Only the Customer can decide what processing of Personal Data a Contractor can do under the Contract and must specify it for the Contract using the template in Annex E of the Contract (*Authorised Processing*).
- 25.11 The Contractor must only process Personal Data if authorised to do so in the Annex to the Contract (*Authorised Processing*) by the Customer. Any further written instructions relating to the processing of Personal Data are incorporated into Annex E of the Contract.
- 25.12 The Contractor must give all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment before starting any processing, including:
- (a) a systematic description of the expected processing and its purpose;
  - (b) the necessity and proportionality of the processing operations;
  - (c) the risks to the rights and freedoms of Data Subjects;
  - (d) the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data.
- 25.13 The Contractor must notify the Customer immediately if it thinks the Customer's instructions breach the Data Protection Legislation.
- 25.14 The Contractor must put in place appropriate Protective Measures to protect against a Data Loss Event which must be approved by the Customer.
- 25.15 If lawful to notify the Customer, the Contractor must notify it if the Contractor is required to process Personal Data by Law promptly and before processing it.

25.16 The Contractor must take all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:

(a) are aware of and comply with the Contractor's duties under this clause 25;

(b) are subject to appropriate confidentiality undertakings with the Contractor or any Subprocessor;

(c) are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise allowed by the Contract;

(d) have undergone adequate training in the use, care, protection and handling of Personal Data.

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

(a) it has obtained prior written consent of the Customer;

(b) the Customer has decided that there are appropriate safeguards (in accordance with Article 46 of the UK GDPR);

(c) the Data Subject has enforceable rights and effective legal remedies when transferred;

(d) the Contractor meets its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;

(e) where the Contractor is not bound by Data Protection Legislation it must use its best endeavours to help the Customer meet its own obligations under Data Protection Legislation; and

(f) the Contractor complies with the Customer's reasonable prior instructions about the processing of the Personal Data.

25.18 The Contractor must notify the Customer immediately if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

(e) receives a request from any third Party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law;

(f) becomes aware of a Data Loss Event.

25.19 Any requirement to notify under clause 25.17 includes the provision of further information to the Customer in stages as details become available.

25.20 The Contractor must promptly provide the Customer with full assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 25.17. This includes giving the Customer:

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

(b) reasonably requested assistance so that it can comply with a Data Subject Access Request within the relevant timescales in the Data Protection Legislation;

(c) any Personal Data it holds in relation to a Data Subject on request;

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

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

25.21 The Contractor must maintain full, accurate records and information to show it complies with this clause 15. This requirement does not apply where the Contractor employs fewer than 250 staff, unless either the Customer determines that the processing:

(a) is not occasional;

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

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

25.22 The Contractor will make available to the Customer all information necessary to demonstrate compliance with clause 15 and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor appointed by the Customer.

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

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

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

(b) obtain the written consent of the Customer;

(c) enter into a written contract with the Subprocessor so that this clause 15 applies to the Subprocessor;

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

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

25.26 At any time the Customer can, with 30 Working Days' notice to the Contractor, change this clause 25 to:

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

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

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

25.28 The Contractor:

(a) must provide the Customer with all Customer Data in an agreed open format within 10 Working Days of a written request;

(b) must have documented processes to guarantee prompt availability of Customer Data if the Contractor stops trading;

(c) must securely destroy all storage media that has held Customer Data at the end of life of that media using Good Industry Practice;

(d) must securely erase or return all Customer Data and any copies it holds when asked to do so by the Customer unless required by Law to retain it;

(e) indemnifies the Customer against any and all losses, damages, costs or expenses (including professional fees and fines) incurred if the Contractor breaches clause 25 and any Data Protection Legislation

## **26. FREEDOM OF INFORMATION**

26.1 The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Contractor shall:

- (a) provide all necessary assistance and full cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;
- (b) 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;
- (c) 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
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Customer.

26.2 The Contractor acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Contractor. The Customer shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Customer shall be responsible for determining in its absolute discretion whether any Commercially

Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

**27. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

- 27.1 The Contractor and any sub-contractor shall not make any press announcements or publicise the Contract in any way without the Customer's prior written Approval.
- 27.2 The Customer shall be entitled to publicise the Contract in accordance with any legal obligation on the Customer, including any examination of the Contract by the Auditor.
- 27.3 The Contractor shall not do anything, or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.
- 27.4 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

**28. INTELLECTUAL PROPERTY RIGHTS**

- 28.1 The Contractor shall retain ownership of all Intellectual Property created by the Contractor or any Staff or Sub-Contractor of the Contractor:
  - (a) in the course of performing the Services; or
  - (b) exclusively for the purpose of performing the Services.
- 28.2 The Contractor hereby grants, or shall procure the direct grant, to the Customer of a perpetual, royalty free, irrevocable and non-exclusive licence of the Intellectual Property, and shall allow the Customer to use the Intellectual Property for any purpose relating to the exercise of the business or function of the Customer provided in each case that such rights shall not extend to the commercial exploitation of the Intellectual Property. This licence shall, during its term, include the right to sub-licence to a third party (including, for the avoidance of doubt, any replacement Contractor or other third party invited by the Customer to participate in a tendering process for the award of a contract to deliver replacement services).
- 28.3 The Contractor shall indemnify the Customer against all claims, demands, actions, costs, expenses (including legal costs and

disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Customer's acts or omissions.

## **29. RECORDS AND AUDIT ACCESS**

- 29.1 The Contractor shall keep and maintain until six years after the end of the Contract Period (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, the Contracts entered into with the Customer and the amounts paid by the Customer.
- 29.2 The Contractor shall keep the records and accounts referred to in clause 29.1 above in accordance with good accountancy practice.
- 29.3 The Contractor shall on request afford the Customer, the Customer's representatives and/or the Auditor such access to such records and accounts as may be required by the Customer from time to time.
- 29.4 The Contractor shall provide such records and accounts (together with copies of the Contractor's published accounts) during the Contract Period and for a period of 6 years after the expiry of the Contract Period to the Customer and the Auditor.
- 29.5 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services, except insofar as the Contractor accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.
- 29.6 Subject to the Customer's rights of confidentiality, the Contractor shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:
  - (a) all information requested by the Customer within the scope of the audit;
  - (b) reasonable access to sites controlled by the Contractor and to Equipment used in the provision of the Services; and
  - (c) access to Staff.

29.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 29, unless the audit reveals a material Default by the Contractor in which case the Contractor shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

29.8 If the Authority, acting reasonably, is concerned either:

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

then the Authority may:

- (i) require that the Contractor provide to the Authority (for its approval) a plan setting out how the Contractor will ensure continued performance of the Contract (in the case of (a)) or improve its sustainability conduct or performance (in the case of (b)) and the Contractor will make changes to such plan as reasonably required by the Authority and once it is agreed then the Contractor shall act in accordance with such plan and report to the Authority on demand
- (ii) if the Contractor fails to provide a plan or fails to agree any changes which are requested by the Authority or materially fails to implement or provide updates on progress with the plan, terminate the Contract immediately for material breach (or on such date as the Authority notifies).

### **30. REPLACEMENT OF CORRUPTED DATA**

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

### **31. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE**

31.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been

performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Customer shall take reasonable steps to investigate the complaint. The Customer may, in its sole discretion, uphold the complaint, and may, acting reasonably apply the Service Credit regime as set out in the Framework Agreement.

31.2 If the Customer is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Customer may, without prejudice to its rights under clause 43, 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 Contractor shall have demonstrated to the reasonable satisfaction of the Customer that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
- (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 Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- (c) charge the Contractor for and the Contractor shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

31.3 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Customer shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten Working Days of the Customer's instructions or such other period of time as the Customer may direct.

31.4 If the Contractor:

- (a) fails to comply with clause 31.3 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
- (b) persistently fails to comply with clause 31.3 above,

the Customer may terminate the Contract with immediate effect by giving the Contractor notice in writing.

## **32. RIGHTS AND REMEDIES**

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

## **33. TRANSFER AND SUB-CONTRACTING**

- 33.1 The Contractor shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior written Approval by the Customer. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- 33.2 Provided that the Customer has given prior written consent, the Contractor shall be entitled to novate the Contract following the novation of the Framework Agreement where:
  - (a) the specific change in contractor was provided for in the procurement process for the award of the Framework Agreement;
  - (b) there has been a universal or partial succession into the position of the Contractor, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.
- 33.3 The Contractor shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.
- 33.4 Where the Customer has consented to the placing of Sub-Contract(s), copies of each Sub-Contract shall, at the request of the Customer, be sent by the Contractor to the Customer as soon as reasonably practicable.
- 33.5 The Customer 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 by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Customer; or
- (c) any private sector body which substantially performs the functions of the Customer,

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

#### **34. WAIVER**

- 34.1 A waiver of any right or remedy under this Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 34.2 A failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 34.3 A party that waives a right or remedy provided under this Contract or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

#### **35. VARIATION**

- 35.1 Subject to the provisions of this clause 35, the Customer may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".
- 35.2 The Customer may request a Variation by completing and sending the Contract Change Notice attached at Annex D (the **CCN**) to the Contractor, giving sufficient information for the Contractor to assess the extent of the Variation and any additional cost that may be incurred. The Contractor shall respond to a request for a Variation within the time limits specified in the CCN. Such time limits shall be reasonable having regard to the nature of the Order.

35.3 If the Contractor is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Customer may:

- (a) agree that the Parties continue to perform their obligations under the Contract without the Variation; or
- (b) terminate the Contract with immediate effect, except where the Contractor has already delivered part or all of the Order in accordance with the Order Form or where the Contractor can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree on a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

35.4 If the Parties agree the Variation and any variation in the Contract Price, the Contractor shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

35.5 Execution of a CNN is made via electronic signature as described in clause F of the Background section of the Contract.

### **36. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

36.1 Except as expressly provided elsewhere in this Contract, a person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

36.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any other person. No term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Contract.

### **37. SEVERANCE**

37.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-

provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

- 37.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **LIABILITIES**

### **38. LIABILITY, INDEMNITY AND INSURANCE**

- 38.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

- (a) death or personal injury caused by its negligence;
- (b) Fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- (d) any claim under clause 18.6;
- (e) any claim under clause 21; or
- (f) any claim under the indemnity in clause 28.3.

- 38.2 Subject to clause 38.3 and clause 38.4, the Contractor shall indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor 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 Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. The Contractor 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 Customer or by breach by the Customer of its obligations under the Contract.

- 38.3 Subject always to clause 38.1 and clause 38.4, the liability of either Party for Defaults shall be subject to the following financial limits:

- (a) the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed £1 million and
- (b) the annual aggregate liability under the Contract of either Party for all Defaults shall in no event exceed the greater of £1 million or 100% of the Contract Price payable by the Customer to the Contractor in the Contract Year in which the liability arises.

38.4 Subject to clause 38.1, in no event shall either Party be liable to the other 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); or
- (f) any indirect or consequential loss or damage.

38.5 The Customer may, among other things, recover as a direct loss:

- (a) any additional operational and/or administrative expenses arising from the Contractor's Default;
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Contractor's Default; and
- (c) the additional cost of any replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Contractor.

38.6 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Contractor to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Contractor that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.

Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including where the loss or damage is covered by any indemnity.

### **39. INSURANCES**

- 39.1 The Contractor shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover (the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of 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 Contractor.
- 39.2 The Contractor shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 39.3 If, for whatever reason, the Contractor fails to give effect to and maintain the Required Insurances, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 39.4 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- 39.5 The Contractor shall hold and maintain the Required Insurances for a minimum of six years following the expiry or earlier termination of the Contract.

### **40. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY**

The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Contractor shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

#### 41. **WARRANTIES AND REPRESENTATIONS**

The Contractor warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
- (b) the Contract is executed by a duly authorised representative of the Contractor;
- (c) in entering the Contract it has not committed any Prohibited Act;
- (d) as at the Service Commencement Date, all information, statements and representations contained in the Tender and the SQ Response for the Services are true, accurate and not misleading except as may have been specifically disclosed in writing to the Customer before execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware during the Contract Period which would render any such information, statement or representation to be false or misleading;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an adverse affect on its ability to perform its obligations under the Contract;
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (h) it owns, 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;
- (i) the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (j) at all times sufficient resources shall be allocated with the appropriate technical expertise to supply and to provide the Services in accordance with this Agreement

- (k) the Authority shall be provided with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services

## **DEFAULT, DISRUPTION AND TERMINATION**

### **42. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL**

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

- (a) the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Contractor with one or more other companies or the solvent reconstruction of the Contractor;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Contractor (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Contractor (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Contractor (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor;

- (g) the Contractor (being an individual) is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 42.1(a) to clause 42.1(h) (inclusive); or
- (j) the Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

42.2 The Contractor shall notify the Customer immediately if the Contractor undergoes a change of control within the meaning of section 450 of the Corporation Tax Act 2010 (**Change of Control**). The Customer may terminate the Contract by notice in writing with immediate effect within six Months of:

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

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

#### 43. **TERMINATION ON DEFAULT**

43.1 The Customer may terminate the Contract by giving written notice to the Contractor with immediate effect if the Contractor commits a material breach and if:

- (a) a substantial portion of this Contract; or
- (b) any of the material obligations set out in this Contract over the term of this Contract.
- (c) if the Authority discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded;
- (d) the Supplier or its affiliates embarrass or bring the Authority into disrepute or diminish the public trust in them;
- (e) where a right to terminate described in bribery clause occurs;

- (f) the Supplier is in breach of any of its health, safety policy statement and/or well-being obligations

43.2 For the purposes of clause 43.1, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

- (a) a substantial portion of this Contract; or
- (b) any of the material obligations set out in this Contract over the term of this Contract.

if the Authority discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded;

the Supplier or its affiliates embarrass or bring the Authority into disrepute or diminish the public trust in them;

where a right to terminate described in bribery clause occurs;

- (c) the Supplier is in breach of any of its health, safety policy statement and/or well-being obligations

In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

43.3 The Customer may terminate the Contract by giving written notice to the Contractor with immediate effect if:

- (a) the Contractor repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
- (b) if any of the provisions of Regulation 73(1)(a-c) of the Public Contracts Regulations 2015 apply;
- (c) any warranty given by the Contractor in clause 41 of this Contract is found to be untrue or misleading.
- (d) if the Customer discovers that the Contractor was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded
- (e) the Contractor or its affiliates embarrass or bring the Authority into disrepute or diminish the public trust in them
- (f) where a right to terminate described in prevention of bribery clause 21 occurs

- (g) the Contractor is in breach of any of its health and safety policy obligations
- (h) if the Framework Agreement is terminated.

43.4 If the Customer fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, except that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under clause 19.

#### **44. TERMINATION FOR CONVENIENCE**

The Customer may terminate this Contract at any time by giving one Months' written notice to the Contractor.

#### **45. CONSEQUENCES OF TERMINATION OR EXPIRY**

45.1 Where the Customer terminates the Contract under clause 42 and then makes other arrangements for the supply of Services, the Customer may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 42, no further payments shall be payable by the Customer to the Contractor until the Customer has established the final cost of making those other arrangements.

45.2 Subject to clause 38, where the Customer terminates the Contract under clause 44, the Customer shall indemnify the Contractor against any reasonable commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause 44.

45.3 The Customer shall not be liable under clause 45.2 to pay any sum that:

- (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated before the expiry of the Contract Period.

45.4 Except 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 before 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 Customer or the Contractor under clause 17, clause 18, clause 19, clause 20, clause 23, clause 24, clause 25, clause 26, clause 28, clause 29, clause 32, clause 38, clause 39 clause 40, clause 45, clause 47, and clause 52.

#### **46. DISRUPTION**

- 46.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other Contractor employed by the Customer.
- 46.2 The Contractor shall immediately inform the Customer of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 46.3 In the event of industrial action by the Staff, the Contractor shall seek the Customer's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 46.4 If the Contractor's proposals referred to in clause 46.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may:
  - (a) require the Contractor to provide alternative proposals; or

- (b) undertake the services itself and recover from the Contractor the additional costs incurred in the process.

Subject to clause 46.5, nothing in this clause shall release the Contractor from the proper performance of its obligations under the Contract.

- 46.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

#### **47. RECOVERY ON TERMINATION**

- 47.1 On the termination of the Contract for any reason, the Contractor shall:

- (a) immediately return to the Customer all Confidential Information, Personal Data and Customer's Intellectual Property in its possession or in the possession or under the control of any permitted Contractors or Sub-Contractors, which was obtained or produced in the course of providing the Services;
- (b) immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Contractor under clause 9. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- (c) assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to any Replacement Contractor and/or the completion of any work in progress; and
- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Contractor to conduct due diligence.

- 47.2 If the Contractor fails to comply with clause 47.1(a) and clause 47.1(b), the Customer may recover possession thereof and the Contractor grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted Contractors or Sub-Contractors where any such items may be held.

- 47.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause 47.1(c) and clause 47.1(d) free of charge. Otherwise, the Customer shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

#### **48. DISPUTE RESOLUTION**

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

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

- 48.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under clause 52 which clause shall apply at all times.

#### **49. FORCE MAJEURE**

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this

Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 8 weeks the party not affected may terminate this Contract by giving 30 days' written notice to the affected party.

**50. ENTIRE AGREEMENT**

- 50.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 50.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract, provided that nothing in this clause 50 shall operate to exclude any liability for fraud.
- 50.3 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the clauses of the Contract;
  - (b) the Order Form except Appendices B (Contractor's Tender) and C (Supplemental Tender) to the Order Form;
  - (c) the terms of the Framework Agreement, the Schedules to the Framework Agreement and the appendices to the Order Form, except Schedule 1, part 2, Appendix B (the Contractor's Tender), and Appendix C to the Order Form (Supplemental Tender);
  - (d) any other document referred to in the clauses of the Contract; and
  - (e) Schedule 1, part 2 of the Framework Agreement and Appendix B to the Order Form (the Contractor's Tender), and Appendix C to the Order Form (Supplemental Tender).
- 50.4 This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

## **51. NOTICES**

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

51.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or by fax or e-mail. Such letters shall be addressed to the other Party in the manner referred to in clause 51.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours in the case of fax or e-mail, or sooner where the other Party acknowledges receipt of such letters, fax or e-mail.

51.3 For the purposes of clause 51.2 the address of each Party shall be:

(a) For the Authority:

Name: [REDACTED] (Contract Manager)

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

Tel: 0208 225 8462

Email: contractmanagement@apha.gov.uk

(b) For the Contractor:

Name: [REDACTED] (Service Manager)

Address: Unit 7 and 8 Withybush Industrial Estate, Haverfordwest, Pembrokeshire. Wales. SA62 4BS

Tel: [REDACTED]

E-mail: [REDACTED]

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

## **52. GOVERNING LAW AND JURISDICTION**

52.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual

disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

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

## ANNEX A - SPECIFICATION OF REQUIREMENTS AND CONTRACTOR'S LOTS

### Specification of Requirements:

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

### Contractor's Lots:

Where indicated below, the Contractor has been awarded the following Lot(s):

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

## ANNEX B – CONTRACT PRICE

### 1. CONTRACTOR FEES

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

**Table 2. Contractor Fees**

| COMPONENT OF CONTRACTOR FEE                                                | RELEVANT LOT(s) | RATE (£) |
|----------------------------------------------------------------------------|-----------------|----------|
| Haulage Rate A (per loaded mile, for transportation of 1 – 5 animals)      | Lot 1           |          |
| Haulage Rate B (per loaded mile, for transportation of 6 – 19 animals)     | Lot 1           |          |
| Haulage Rate C (per loaded mile, for transportation of 20 – 30 animals)    | Lot 1           |          |
| Haulage Rate D (per loaded mile, for transportation of 31 or more animals) | Lot 1           |          |
| Slaughter Rate (per animal)                                                | Lot 1           |          |
| Haulage Rate A (per loaded mile, for transportation of 1 – 5 animals)      | Lot 4           |          |
| Haulage Rate B (per loaded mile, for transportation of 6 – 19 animals)     | Lot 4           |          |
| Haulage Rate C (per loaded mile, for transportation of 20 – 30 animals)    | Lot 4           |          |
| Haulage Rate D (per loaded mile, for transportation of 31 or more animals) | Lot 4           |          |
| Slaughter Rate (per animal)                                                | Lot 4           |          |
| Haulage Rate A (per loaded mile, for transportation of 1 – 5 animals)      | Lot 5           |          |
| Haulage Rate B (per loaded mile, for transportation of 6 – 19 animals)     | Lot 5           |          |

|                                                                            |       |      |
|----------------------------------------------------------------------------|-------|------|
| Haulage Rate C (per loaded mile, for transportation of 20 – 30 animals)    | Lot 5 | ████ |
| Haulage Rate D (per loaded mile, for transportation of 31 or more animals) | Lot 5 | ████ |
| Slaughter Rate (per animal)                                                | Lot 5 | ████ |

## 2 HAULAGE RATE

- 2.1 The cost of transporting animals shall be an all-inclusive Haulage Rate, including but not limited to the costs of the driver, driver's mate, all fuels, tolls, ferries and vehicle servicing costs as appropriate.
- 2.2 The Customer will not accept any additional charges associated with the transportation of animals that are not included in the tendered Haulage Rate, apart from where ferry travel is needed to pick-up reactors, where the Authority will reimburse the Contractor for 50% of the cost of the ferry.
- 2.3 The Contractor shall endeavour to travel via the lowest cost sailings available for that day. Copies of receipts should be included with any invoices for the amount being charged.
- 2.4 The Haulage Rate shall be for **a rate per loaded mile**, i.e. the journey from the Notified Premises to the Slaughterhouse, and for the following numbers of animals:
  - a) Haulage Rate A - 1 to 5 animals;
  - b) Haulage Rate B - 6 to 19 animals;
  - c) Haulage Rate C - 20 to 30 animals;
  - d) Haulage Rate D - 31 animals or more.
- 2.5 For the avoidance of doubt, if the Contractor sub-contracts any haulage activity, the location of the Contractor's Slaughterhouse will be used in the calculation of all mileage. Any additional mileage between the Contractor's premises and those of the Sub-contractor shall not be chargeable to the Customer.
- 2.6 Pick-ups from multiple Notified Premises on the same journey are permitted as part of this Framework, provided the Customer's removal dates are met and only reactor animals are removed.

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- 2.7 Where multiple pick-ups of animals occur, the Haulage Rate shall be based on the total number of reactor animals carried after the final collection. Payment made by the Customer shall be for the journey from the first Notified Premises via other Notified Premises to the Slaughterhouse.
  - 2.8 The Contractor shall endeavour to carry out multiple pick-ups using the lowest practical mileage, in order to meet the condition under Article 3 of EC Regulation 1/2005, 'all necessary arrangements have been made in advance to minimise the length of the journey and meet animals' needs during the journey'.
  - 2.9 Where restricted access to Notified Premises on which animals are located results in a number of smaller vehicles being required for the same pick up, the Contractor shall seek written approval from the Customer for multiple Haulage Rates to be chargeable for each vehicle used. An email may constitute written approval.
  - 2.10 If the Contractor uses multiple vehicles for collection of animals for their own convenience, the Customer will not be liable to pay multiple Haulage Rates. Only orders for which there is a recognisable need for multiple vehicles to be used will be granted the Customer's approval for multiple Haulage Rates to be chargeable.
  - 2.11 In the event of animals not being fit for collection for any reason (as described in Section 3 of the Statement of Requirement), and provided that the reason is outside of the Contractor's direct control, the Customer agrees to pay the Haulage Rate for any wasted mileage as if it were loaded miles. As described in Section 4 of the Statement of Requirement), the Customer should be notified immediately if practical, or if not, within the same Working Day, of any animals that are not successfully collected for any reason.
  - 2.12 The Contractor shall be entitled to propose a variation to the Haulage Rate annually, to take effect on each anniversary of commencement of the contract for the duration of this Framework Agreement. Any proposed variation to the Haulage Rate should be submitted, in writing, and with appropriate justification to support the proposal, to the Authority's Contract Manager at least two (2) calendar months before the variation is proposed to take effect.
  - 2.13 The Authority reserves the right to refuse the proposed variation if appropriate justification, at the sole discretion of the Authority, is not provided, or if it exceeds the average rate of inflation as measured by the CPI over each complete month of the current financial year. The exception to this is where a Contractor has lowered the Haulage Rate during a previous price review, they may then increase these rates at a subsequent price review by any level up to their highest level that has

been previously agreed with the Authority.

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

### **3 SLAUGHTER RATE**

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

## **4 DISPOSAL RATE**

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

## **5 SALVAGE RATE**

- 5.1 When any carcase or part of any carcase is permitted to enter the food chain, the Contractor shall pay the Salvage Rate to the Customer dependent on the category of the carcase, as detailed in Table 1 below.
- 5.2 Salvage returned to the Customer should be calculated by taking the percentage rate from Table 1 and applying this to the Overall GB Weekly prices as specified by AHDB Meat Services for the week immediately prior to that in which the animal is slaughtered.  
  
This information is available on the AHDB website:  
<https://ahdb.org.uk/beef/gb-deadweight-cattle-prices-by-region>
- 5.3 For rates (v) and (vi) in Table 1 below, the Salvage Rate should be calculated by applying the percentage stated against the AHDB All Cows price as these categories do not have their own published prices. All other rates should use the matching AHDB published prices.
- 5.4 For rate (vii) Pigs, in Table 1 below, the Salvage Rate should be calculated by applying the percentage stated against the AHDB Standard Pig Price (SPP) and the relevant dressing specification used. This information is available on the AHDB website:

<https://ahdb.org.uk/pork/pork-markets>

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

**Table 3. Salvage Rates**

| Ref.   | Species           | UK                                                           |
|--------|-------------------|--------------------------------------------------------------|
| (i)    | <b>Bovine</b>     | <b>All Steers (animals aged 24-30 months)</b><br>70% per Kg  |
| (ii)   |                   | <b>Heifers (animals aged 24-30 months)</b><br>75% per Kg     |
| (iii)  |                   | <b>Young Bulls (animals aged 18-24 months)</b><br>65% per Kg |
| (iv)   |                   | <b>All Cows</b><br>60% per Kg                                |
| (v)    |                   | <b>Calves (under 6 months)</b><br>20% per Kg                 |
| (vi)   |                   | <b>All other bovine</b><br>60% per Kg                        |
| (vii)  | <b>Non-Bovine</b> | <b>Pigs</b><br>50% per Kg                                    |
| (viii) |                   | <b>Ovine</b><br>50% per Kg                                   |
| (ix)   |                   | <b>All Other species</b><br>0% per Kg                        |

- 5.6** The Contractor shall submit a consolidated invoice, in arrears, for Orders completed each Working Week (usually Monday to Friday), including any Orders completed by the Contractor directly or those completed by its Sub-Contractors.
- 5.7** In addition to the weekly totals for the Invoice as a whole, the Contractor shall provide a **daily** summary of:
- Total Haulage Rate
  - Total Slaughter Rate
  - Total Disposal Rate (if applicable)
  - Total Salvage Rate to be returned to the Authority

5.8 Invoices shall be supported by evidence in a suitable format that clearly identifies, for each Order including but not limited to:

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

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

## **ANNEX C – ORDER FORM**

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

## ANNEX D – CONTRACT CHANGE NOTICE (CCN)



Department  
for Environment  
Food & Rural Affairs

### CALL-OFF CONTRACT CHANGE NOTE

|                                            |  |
|--------------------------------------------|--|
| <b>Contract Change Note Number</b>         |  |
| <b>Contract Reference Number and Title</b> |  |
| <b>Variation Title</b>                     |  |
| <b>Number of Pages</b>                     |  |

Whereas the [Contractor] and the Authority entered into a Call-Off Contract for the provision of [contract title] dated [dd/mm/yyyy] (the “Original Call-Off Contract”) and now wish to amend the Original Call-Off Contract.

It is agreed as follows:

1. With effect from [dd/mm/yyyy] the Original Call-Off Contract shall be amended as set out in this Call-Off Contract Change Note:

|                                               |                                      |
|-----------------------------------------------|--------------------------------------|
| <b>Change Requestor / Originator</b>          |                                      |
| <b>Summary of Change</b>                      |                                      |
| <b>Reason for Change</b>                      |                                      |
| <b>Revised Call-Off Contract Price</b>        | Original Call-Off Contract Value £   |
|                                               | Previous Call-Off Contract Changes £ |
|                                               | Call-Off Contract Change Note [x] £  |
|                                               | New Call-Off Contract Value £        |
| <b>Revised Payment Schedule</b>               |                                      |
| <b>Revised Specification (see Annex A)</b>    |                                      |
| <b>Revised Call-Off Contract Period</b>       |                                      |
| <b>Change in Call-Off Contract Manager(s)</b> |                                      |
| <b>Other Changes</b>                          |                                      |

2. Save as herein amended all other terms and conditions of the Original Call-Off Contract shall remain in full force and effect.

Execution of the Contract Change Note is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and

the Electronic Communications Act 2000. The revised Contract is formed on the date on which both Parties communicate acceptance of its terms on the Authority's electronic contract management system ("Bravo").

## ANNEX E – AUTHORISED DATA PROCESSING TEMPLATE

|                                             |                                                                                                                                                                                                                                                                                                      |
|---------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Contract:</b>                            | <b>CALL OFF CONTRACT FOR THE PROVISION OF MANAGEMENT, COLLECTION, SLAUGHTER, SALVAGE AND DISPOSAL OF FARMED LIVESTOCK FOR TB CONTROL PURPOSES (REACTOR REMOVAL)</b>                                                                                                                                  |
| <b>Date:</b>                                | 01 February 2022                                                                                                                                                                                                                                                                                     |
| <b>Description Of Authorised Processing</b> | To enable positive TB reactors to be removed from farms.                                                                                                                                                                                                                                             |
| Subject matter of the processing            | To enable the effective provision of the collection, slaughter, salvage and disposal of farmed livestock for TB control purposes.                                                                                                                                                                    |
| Duration of the processing                  | The Term of the Call-Off Contract.                                                                                                                                                                                                                                                                   |
| Nature and purposes of the processing       | Processing will involve organising the reactor removal from specific farm locations across England, Wales and Scotland. It will involve contacting the keeper to arrange a suitable collection time and date and delivering the animal back to the slaughterhouse to process in line with the Order. |
| Type of Personal Data                       | Names, telephone and address information of Keeper; animal ID information.                                                                                                                                                                                                                           |
| Categories of Data Subject                  | Owners of the infected premises (usually farms) and potentially employees at that site.                                                                                                                                                                                                              |