



Department
for Environment
Food & Rural Affairs

www.gov.uk/defra

Animal and Plant Health Modelling Services Framework Agreement

Reference 25333

April 2020

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SECTION 1

FORM OF AGREEMENT

PARTIES:

- (1) THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS of Nobel House, 17 Smith Square, London, SW1P 3JR (the “**Authority**”); and
- (2) University of Newcastle-Upon-Tyne (registered in England and Wales under number OC363606) whose registered office is situated at Kings Gate, Newcastle University, Newcastle-upon-Tyne, NE1 7RU (the “**Contractor**”)

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

WHEREAS:

- A The Authority published a contract notice (reference 2091/S 210-513445) on 25 October 2019 in the Official Journal of the European Union for the provision of Animal and Plant Health Modelling Services
- B Following an invitation to tender for the Services the Contractor submitted a tender on 03 December 2019.
- C On the basis of the Contractor’s tender the Authority selected the Contractor to enter into this Agreement to provide the Services to the Authority and any other Contracting Authority listed in the published contract notice on a Call-Off basis in accordance with this Agreement.
- D This Agreement sets out the terms and conditions on which the Authority and any other Contracting Authority listed in the published contract notice may order Services from the Contractor and on which the Contractor will supply those Services.

This Framework Agreement comprises the following:

Section 1	Form of Agreement
Section 2	Standard Terms and Conditions of Framework Agreement
Schedule 1	Call-Off Terms and Conditions
Schedule 2	Specification
Schedule 3	Pricing
Schedule 4	Change Control
Schedule 5	Data Processing
Schedule 6	Call-Off Order Forms
Schedule 7	Security Requirements

SECTION 2

STANDARD TERMS AND CONDITIONS OF FRAMEWORK AGREEMENT

IT IS HEREBY AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Framework Agreement, unless the context otherwise requires:

1.1.1 capitalised expressions shall have the meanings set out in Schedule 1 to this Framework Agreement or the relevant Framework Agreement schedule in which that capitalised expression appears;

1.1.2 if a capitalised expression does not have an interpretation in Schedule 1 to this Framework Agreement or the relevant Framework Agreement schedule, it shall have the meaning given to it in this Framework Agreement. If no meaning is given to it in this Framework Agreement, it shall in the first instance be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning;

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

words importing the singular meaning include where the context so admits the plural meaning and vice versa;

words importing the masculine include the feminine and the neuter;

the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

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;

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;

headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement;

the Annexes form part of the Agreement and shall have effect as if set out in full in the body of the Agreement and any reference to the Agreement shall include the Annexes;

references in the Agreement to any clause or sub-clause or Annexe without further designation shall be construed as a reference to the clause or sub-clause or Annexe to the Agreement so numbered;

references in the Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Annexe to the Agreement so numbered; and

reference to a clause is a reference to the whole of that clause unless stated otherwise.

2. TERM OF AGREEMENT

- 2.1 The Agreement commences on 01 March 2020 (the “**Commencement Date**”) and (unless it is terminated early or extended in accordance with the Agreement shall end on 28 February 2023.
- 2.2 The Authority may extend the term of the Agreement by up to a maximum of 12 months (“**Extension**”). The terms of the Agreement will apply throughout the period of any Extension.

3. SCOPE OF THE AGREEMENT

- 3.1 The Agreement governs the relationship between a Customer and the Contractor in respect of the provision of the Services by the Contractor to a Customer.
- 3.2 Customers may order Services from the Contractor in accordance with the procedure in clause 5.
- 3.3 The Contractor understands and acknowledges that Customers are not obliged to purchase any Services from the Contractor and they may order services similar to the Services from parties who are not Potential Contractors at any time.
- 3.4 If there is any conflict between the Agreement and the Call-Off Contract, the conflict shall be resolved according to the following order of priority:
 - 3.4.1 the Call-Off Terms;
 - 3.4.2 the Order Form; and
 - 3.4.3 the Agreement.

4. EXECUTION AND CONTRACTOR'S APPOINTMENT

- 4.1 Execution of the Agreement is carried out in accordance with the 1999 EU Directive 99/93 (Community framework for electronic signatures) and the UK Electronic Communications Act 2000.
- 4.2 The Agreement is formed on the date on which both Parties communicate acceptance of its terms on the Authority's electronic contract management system.
- 4.3 The Authority appoints the Contractor as a potential supplier of Services and the Contractor is eligible for Orders during the term of the Agreement.

5. CALL-OFF CONTRACT AWARD PROCEDURE

- 5.1 When a Customer has a requirement to procure Services through the Framework Agreement (except in an emergency situation), a Mini-Competition will be undertaken to re-open the competition to all Contractors admitted to the Framework who are capable of performing the proposed Services within the relevant Lot.
- 5.2 The Framework Agreement and the Call-Off Contract Terms will apply to the Call-Off Contract, together with such more precisely formulated terms as may be specified by the Customer. Use of the Mini-Competition procedure does not mean that the Specification of Requirements (Schedule 2) set out for this Framework can be changed, although a more precise statement of the requirements will be made.
- 5.3 The invitation to take part in a Mini-Competition will:
 - 5.3.1 be issued in via the Bravo system or via email;
 - 5.3.2 be issued to all Contractors in the relevant Lot capable of fulfilling the Customer's requirements;
 - 5.3.3 specify the award criteria;
 - 5.3.4 specify a fixed time limit for submission of proposals. Such time limit shall be of sufficient duration to allow proposals to be submitted, taking into account factors such as the complexity of the Customer's requirements and the time needed to compile and submit a proposal;
 - 5.3.5 state the Service requirements and seek proposals for fulfilling the requirement, including costs to meet the specific requirements, in accordance with the prices applicable for the relevant Lot;
 - 5.3.6 contain a copy of the Order Form, completed as if it were the resultant Order completed as far as possible and indicating where information from the winning Contractor's proposal will be needed as an input to complete the Order.
- 5.4 When invited by the Authority the Contractor will, via the Bravo system or via email, either submit a written proposal or decline the invitation to take part in the re-opening of competition.
- 5.5 The Authority reserves the right to reject any responses that are received after the specified deadline.
- 5.6 The Authority reserves the right to discuss its outline scope of services simultaneously with all Contractors and if necessary make modifications at its sole discretion to any outline scope of services before it issues its written invitations to tender for Call-Off Contracts.
- 5.7 The Authority will evaluate all the Tenders submitted for each Mini-Competition.
- 5.8 The Call-Off Contract shall be awarded to the highest scoring Framework Contractor.

- 5.9 Any tenders submitted by the Contractor in response to a Mini-Competition shall remain open for acceptance for 90 days (or such other period as specified in the invitation to tender issued by the Authority).
- 5.10 Subject to paragraph 5.1 (above), the Authority reserves the right in emergency situations to adopt a Direct Award process which will follow the procedures set out below:
- 5.11.1 Identify all Contractors capable of performing the required services without any amendment to the Scope of Services contained within the Framework Agreement.
 - 5.11.2 Determine which Contractor's offering provides the most economical advantageous solution based on information submitted in the Contractor's Response to the Framework ITT.
- 5.11 All Call-Off Contracts awarded either through the Mini-Competition process or through the Direct Award process shall be awarded based on a combination of capability, capacity and cost. The technical weighting will range between 50% - 80% and the commercial weighting will range between 20% - 50%. The weightings applied will be determined by the Authority and based on the complexity of the Customer's requirement.
- 5.12 All Call-Off Contracts shall be based on the Order Form set out in Schedule 6 and governed by these Terms and Conditions of Framework Agreement and the Call-Off Terms and Conditions (Schedule 1).
- 5.13 The Authority reserves the right to amalgamate tender debriefs and carry them out at Review Meetings.
- 5.14 The Authority will nominate a responsible owner for monitoring and managing each individual Call-Off Contract. This will be the Contract Manager.
- 5.15 Notwithstanding the fact that the Authority has followed the procedure set out above the Authority shall always be entitled to decline to make an award for its Service requirements. Nothing in this Framework Agreement shall oblige the Authority or to place any Order for Services.

6. RESPONSIBILITY FOR AWARDS

- 6.1 The Contractor acknowledges that each Customer is independently responsible for its award of Call-Off Contracts and that the Authority has no liability for:
- 6.1.1 the conduct of any Customer (except the Authority) in relation to the Agreement; or
 - 6.1.2 the performance or non-performance of any Call-Off Contracts between the Contractor and any Customer (except the Authority).

7. WARRANTIES AND REPRESENTATIONS

- 7.1 The Contractor warrants and represents to the Authority and to other Customers that:

- 7.1.1 it has full capacity and authority to enter into and perform its obligations under the Agreement and any Call-Off Contract;
- 7.1.2 the Agreement is executed by a duly authorised representative of the Contractor;
- 7.1.3 it has not committed and will not commit any Prohibited Act by entering into the Agreement or any Call-Off Contract;
- 7.1.4 all information, statements and representations contained in its tender for the Services are true and accurate and not misleading;
- 7.1.5 no claim is being asserted and no litigation or similar action is being taken against it that might affect its ability to provide its obligations under the Agreement or any Call-Off Contract;
- 7.1.6 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under the Agreement and any Call-Off Contract which may be entered into with the Authority or any other Customer;
- 7.1.7 no proceedings or other steps have been taken and not discharged (or, 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;
- 7.1.8 it is not subject to any contractual obligation that is likely to have a detrimental effect on its ability to perform its obligations under the Agreement or any Call-Off Contract; and
- 7.1.9 from the commencement date of any Call-Off Contract it shall have all necessary licences, authorisations, consents or permits and shall be fully compliant with all applicable law in supplying the Service.

8. PERFORMANCE

- 8.1 The Contractor shall perform all Call-Off Contracts in accordance with the requirements of the Agreement and the Call-Off Contract.
- 8.2 If reasonably requested to do so by the Authority, the Contractor shall cooperate fully with any Customer in providing the Services and with other suppliers engaged by the Customer.

9. PRICES FOR SERVICES

- 9.1 The prices set out in Schedule 3 shall apply to any Services ordered pursuant to the Agreement.
- 9.2 The Authority is not liable to the Contractor or any other Customer for payment or otherwise in respect of any Services provided by the Contractor to any other Customer.

10. STATUTORY REQUIREMENTS

- 10.1 The Contractor shall obtain all licences, authorisations, consents or permits required in relation to the performance of the Agreement and any Call-Off Contract.

11. TRANSFER AND SUB-CONTRACTING

- 11.1 The Agreement is personal to the Contractor and the Contractor shall not assign, novate or otherwise dispose of the Agreement or any part thereof without the Authority's prior written consent, except as otherwise agreed with the Authority.

- 11.2 The Contractor shall not be entitled to sub-contract any of its rights or obligations under the Agreement.

- 11.3 The Authority may:

11.3.1 assign, novate or otherwise dispose of its right and obligations under the Agreement or any part thereof to any other Customer; or

11.3.2 novate the Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority

provided that such assignment, novation or disposals shall not increase the burden of the Contractor's obligations under the Agreement.

12. VARIATIONS TO THE AGREEMENT

- 12.1 Any variations to the Agreement, a Call-Off Contract or an Order Form must be made in accordance with the change control notice procedure set out in the Call-Off Contract using the form in Annexe 5.

13. RIGHTS OF THIRD PARTIES

- 13.1 A person who is not a Party shall have no right to enforce any provision of the Agreement which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties. This clause 13 does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

14. ENTIRE AGREEMENT

- 14.1 The Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with therein. The Agreement supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause 14 shall not exclude liability in respect of any fraud or fraudulent misrepresentation.

15. TERMINATION AND SUSPENSION

- 15.1 The Authority may terminate the Agreement by serving written notice on the Contractor with immediate effect if:

15.1.1 the Contractor commits a Material Breach and:

i) it has not remedied the Material Breach to the Authority's satisfaction within 20 working days or such other period as may be specified by the Authority after issue of a written notice specifying the Material Breach and requesting it to be remedied; or

ii) the Material Breach is not, in the Authority's reasonable opinion, capable of remedy

15.1.2 there is a material detrimental change in the Contractor's financial standing and/or credit rating which adversely affects the Contractor's ability to supply the Services.

15.2 The Authority may terminate the Agreement by giving 3 months' written notice to the Contractor.

15.3 The Contractor may terminate the Agreement by giving 6 months' written notice to the Authority.

15.4 Without prejudice to the Authority's rights to terminate the Agreement pursuant to clauses 15.1 and 15.2, if a right to terminate the Agreement arises in accordance with clauses 15.1 or 15.2, the Authority may suspend the Agreement with regard to any or all of the Lots by giving notice in writing to the Contractor.

15.5 If the Authority suspends the Agreement in accordance with clause 15.4, the Agreement shall be suspended for the period set out in the notice or such other period notified to the Contractor by the Authority in writing from time to time.

15.6 Termination or expiry of the Agreement shall not cause any Call-Off Contracts to terminate automatically. All Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with the Call-Off Contract.

15.7 Termination or expiry of the Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under the Agreement prior to termination or expiry.

16. DISPUTES

16.1 If a dispute arises out of or in connection with the Agreement (a "**Dispute**") either Party shall give to the other Party a written notice of the Dispute, setting out its nature and full particulars (a "**Dispute Notice**").

16.2 On service of a Dispute Notice, the Parties shall in good faith attempt to resolve the Dispute within 20 working days of the date of the Dispute Notice and if they cannot do so they shall consider and use a process of alternative dispute resolution which is appropriate for the Dispute and to which they both agree.

16.2 Neither Party may commence any court proceedings against the other Party in connection with a Dispute until 80 working days after the date of the Dispute Notice provided that the right to issue proceedings is not prejudiced by a delay.

17. REPORTS AND MEETINGS

17.1 If requested by the Authority:

17.1.1 the Contractor shall submit Management Information to the Authority throughout the term of the Agreement in any form reasonably required by the Authority on the last day of every month and thereafter in respect of any Call-Off Contract; and

17.1.2 the Parties shall meet and discuss the Management Information. This may be held by teleconference with the agreement of all parties.

17.2 The Authority may:

17.2.1 share the Management Information supplied by the Contractor with any other Customer; and

17.2.2 change the scope of Management Information and shall give the Contractor at least one month's written notice of any change.

18. RECORDS AND AUDITS

18.1 The Contractor shall keep and maintain for 6 years after the date of termination or expiry (whichever is the earlier) of the Agreement accurate records and accounts of the operation of the Agreement including the Services provided under it, any Call-Off Contracts and the amounts paid by each Customer.

18.2 The Contractor shall keep the records and accounts referred to in clause 18.1 in accordance with good accountancy practice.

18.3 The Contractor shall afford the Authority and the NAO access to such records and accounts as may be required from time to time.

18.4 The Contractor shall provide such records and accounts (together with copies of the Contractor's published accounts) during the term of the Agreement and for a period of 6 years after expiry of the Agreement to the Authority (or relevant Customer) and the NAO.

18.5 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Contractor or delay the provision of the Services, save insofar as the Contractor accepts and acknowledges that control over the conduct of Audits carried out by the NAO is outside of the Authority's control.

18.6 Subject to the Authority's rights of confidentiality, the Contractor shall on demand provide the NAO with all reasonable co-operation and assistance in relation to each Audit, including:

18.6.1 all information requested by the NAO within the scope of the Audit;

18.6.2 reasonable access to sites controlled by the Contractor and to equipment used in the provision of the Services; and

18.6.3 access to its staff.

18.7 The Parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 0, unless the Audit reveals a material Default by the Contractor in which case the Contractor shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the Audit.

19. CONFIDENTIALITY

- 19.1 Subject to clause 0, 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.
- 19.2 Clause 0 shall not apply to any disclosure of information:
- 19.2.1 required by any applicable law, provided that clause 21.1 shall apply to any disclosures required under the FOIA or the EIR;
 - 19.2.2 that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under the Agreement;
 - 19.2.3 that is reasonably required by other Customers;
 - 19.2.4 if 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 19.1;
 - 19.2.5 by the Authority of any document to which it is a party and which the Parties to the Agreement have agreed contains no Confidential Information;
 - 19.2.6 to enable a determination to be made under clause 16;
 - 19.2.7 which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party, and the disclosing Party is not under any obligation of confidence in respect of that information;
 - 19.2.8 by the Authority to any other department, office or agency of the government, provided that the Authority informs the recipient of any duty of confidence owed in respect of the information; and
 - 19.2.9 by the Authority relating to the Agreement and in respect of which the Contractor has given its prior written consent to disclosure.

20. DATA PROTECTION

- 20.1 The Parties acknowledge that for the purposes of the Data Protection Legislation:
- 20.1.1 the Customer is the Controller and the Contractor is the Processor of the Personal Data specified in Schedule 5; and
 - 20.1.2 the parties may provide each other with Personal Data relating to persons employed by them and their agents, suppliers and Sub-Contractors for purposes of administering the Framework Agreement and each Party will be an independent Controller of such Personal Data (because the Parties each, independently of each other, determine the means and purposes of processing such Personal Data).
- 20.2 Both parties will duly observe all their obligations under the Data Protection Legislation which arise in connection with the Framework Agreement.

- 20.3 Each party will, prior to providing Personal Data of which it is the Controller to the other, be responsible for ensuring the Data Subject has received adequate privacy information in accordance with GDPR Article 13 to enable the receiving party to process the Personal Data as permitted under clause 20.4 or 20.5 (as applicable).
- 20.4 The only processing of Personal Data specified in clause 20.1.1 that the Contractor is authorised to do is listed in Schedule 5 by the Authority and may not be determined by the Contractor. The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 20.5 The only processing of Personal Data specified in clause 20.1.2 that the parties are authorised to do is processing for purposes administration of the Framework Agreement.
- 20.6 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
- 20.6.1 a systematic description of the envisaged processing operations and the purpose of the processing;
- 20.6.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- 20.6.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
- 20.6.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 20.7 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Framework Agreement:
- 20.7.1 process that Personal Data only in accordance with Schedule 5 unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- 20.7.2 ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:
- i) nature of the data to be protected;
 - ii) harm that might result from a Data Loss Event;
 - iii) state of technological development; and
 - iv) cost of implementing any measures;
- 20.7.3 ensure that:

- (i) the Staff do not process Personal Data except in accordance with this Framework Agreement (and in particular Schedule 5);
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

20.7.4 not transfer Personal Data outside of the European Union unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

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

20.7.5 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Framework Agreement unless the Contractor is required by Law to retain the Personal Data.

20.8 Subject to clause 20.9 the Contractor shall notify the Authority immediately if, in relation to any Personal Data processed in connection with its obligations under this Framework Agreement, it:

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

20.8.2 receives a request to rectify, block or erase any Personal Data;

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

20.8.4 receives any communication from the Information Commissioner or any other regulatory authority;

- 20.8.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- 20.8.6 becomes aware of a Data Loss Event.
- 20.9 The Contractor's obligation to notify under clause 20.8 shall include the provision of further information to the Authority in phases, as details become available.
- 20.10 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Agreement and any complaint, communication or request made under Clause 18.8 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
- 20.10.1 the Authority with full details and copies of the complaint, communication or request;
 - 20.10.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 20.10.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 20.10.4 assistance as requested by the Authority following any Data Loss Event;
 - 20.10.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 20.11 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 20. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- 20.11.1 the Authority determines that the processing is not occasional;
 - 20.11.2 the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - 20.11.3 the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 20.12 The Contractor shall allow for audits of its Personal Data processing activity by the Authority or the Authority's designated auditor.
- 20.13 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- 20.14 Before allowing any Sub-processor to process any Personal Data related to this Framework Agreement, the Contractor must:

- 20.14.1 notify the Authority in writing of the intended Sub-processor and processing;
- 20.14.2 obtain the written consent of the Authority;
- 20.14.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 18 such that they apply to the Sub-processor; and
- 20.14.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 20.15 The Contractor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 20.16 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause 18 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Framework Agreement).
- 20.17 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Officer.
- 20.18 This clause 18 shall apply during the Contract Period and indefinitely after its expiry.

21. FREEDOM OF INFORMATION

- 21.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Authority (at the Contractor's expense) to enable the Authority to comply with these information disclosure requirements.
- 21.2 The Contractor shall and shall procure that its subcontractors shall:
 - 21.2.1 transfer any Request for Information to the Authority as soon as practicable after receipt and in any event within 2 working days of receiving a Request for Information;
 - 22.2.2 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within 5 working days (or such other period as the Authority may specify) of the Authority requesting that Information; and
 - 22.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 21.3 The Contractor shall not respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 21.4 The Contractor acknowledges that the Authority may (acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public

authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004) (**Code**)) be obliged under the FOIA or the EIR to disclose Information:

21.4.1 without consulting with the Contractor; or

21.4.2 following consultation with the Contractor and having taken its views into account

provided always that where clause 21.4.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

21.5 The Contractor shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

21.6 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 21.3.

22. PUBLICITY

22.1 Unless otherwise directed by the Authority, the Contractor shall not make any press announcements or publicise the Agreement in any way without the Authority's prior written consent.

22.2 The Authority may publicise the Agreement in accordance with any legal obligation on the Authority including any examination of the Agreement by the NAO or otherwise.

22.3 The Contractor shall not do anything that may damage the Authority's reputation or bring the Authority into disrepute.

23. PREVENTION OF BRIBERY

23.1 The Contractor:

23.1.1 shall not, and shall procure that its staff and all sub-contractor personnel shall not, in connection with the Agreement and any Call-Off Contract commit a Prohibited Act; and

23.1.2 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 a Customer, or that an agreement has been reached to that effect, in connection with the execution of the Agreement, excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of the Agreement.

23.2 The Contractor shall:

23.2.1 if requested by a Customer, 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

23.2.2 within 60 working days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Contractor) compliance with this clause 23 by the Contractor and all persons associated with it. The Contractor shall provide such supporting evidence of compliance as the Authority may reasonably request.

23.3 The Contractor shall have an anti-bribery policy (which shall be disclosed to Customers) to prevent its staff and sub-contractors from committing a Prohibited Act and shall enforce it where appropriate.

23.4 If any breach of clause 23.1 is suspected or known, the Contractor must notify the Authority immediately.

23.5 If the Contractor notifies the Authority that it suspects or knows that there may be a breach of this clause **Error! Reference source not found.**, the Contractor must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documents.

23.6 The Customer may terminate the Agreement by written notice with immediate effect if the Contractor, its staff or sub-contractors (in all cases whether or not acting with the Contractor's knowledge) breaches clause 23.1.

23.7 Any notice of termination under clause 23.6 must specify:

23.7.1 the nature of the Prohibited Act;

23.7.2 the identity of the party whom the Authority believes has committed the Prohibited Act; and

23.7.3 the date on which the Agreement will terminate.

23.8 Notwithstanding clause 16, any dispute relating to:

23.8.1 the interpretation of this clause **Error! Reference source not found.**; or

23.8.2 the amount or value of any gift, consideration or commission

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

23.9 Any termination under this clause 23 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

24. GOVERNING LAW

24.1 The Agreement shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales.

24.2 The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

SCHEDULE 1 - TERMS AND CONDITIONS OF CALL-OFF CONTRACTS

A GENERAL PROVISIONS

A1 Definitions and Interpretation

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

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

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

“AP” means ‘affected premises’ which are subject to a notice of the Secretary of State/Scottish Ministers/Welsh Ministers declaring it to be either infected with a disease (Infected Premises) or where there is a strong suspicion that an Exotic Notifiable Disease may be present. Entry and exit restrictions are likely to apply.

“APHA” means the Animal and Plant Health Agency, an Executive Agency of the Authority.

“Approval” and **“Approved”** means the Customer’s prior written consent.

“Authority” means the Secretary of State for Environment, Food and Rural Affairs.

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

“Authority Materials” means all guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs, images, videos or other material which is furnished to or made available to the Contractor by or on behalf of the Authority and/or any Personal Data for which the Authority is Data Controller.

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

“Bravo” means the Customer’s electronic contract management system.

“Call-Off Contract” has the meaning given to it in the Framework Agreement.

“Call-Off Procedure” means the process by which the Authority will award Call-Off Contracts to Contractors as set out in the Contract.

“Call-Off Terms and Conditions” means the standard terms and conditions of the Call-Off Contract as set out in Schedule 1.

“CCN” means a change control notice in the form set out in Schedule 4

“Commencement Date” means the date set out in section 1.2 of the Order Form.

“Commercially Sensitive Information” means the information set out in section 3 of the Order Form:

- (a) which is provided by the Contractor to the Customer in confidence for the period set out in section 3 of the Order Form; and/or
- (b) which constitutes a trade secret.

“Completion Date” means the date of expiry of the Call-Off Contract set out in the Order Form.

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

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

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

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

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

“Contracting Authority” means any contracting authority (other than the Customer) as defined in regulation 3 of the Public Contracts Regulations 2006 (SI 2006/5).

“Contractor” means the Party identified as such in the Order Form.

“Contractor Software” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is set out in section 4 of the Order Form.

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

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

“Controller” has the meaning given in the GDPR.

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

“Customer” is the Party identified as such in the Order Form.

“Customer Data” means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Customer; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to the Call-Off Contract; or
- (b) any Personal Data for which the Customer is the Data Controller.

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

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

“Customer System” means the Customer’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Contractor in connection with the Call-Off Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Contractor System or which is necessary for the Customer to receive the Services.

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

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

“Data Protection Legislation” means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy.

“Data Protection Officer” has the meaning given in the GDPR.

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

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

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

“DEFRA” means the Department for the Environment, Farming and Rural Affairs.

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

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

“End Date” means the date the Call-Off Contract ends set out in section 1.3 of the Order Form.

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

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

“Force Majeure Event” means any event outside the reasonable control of either Party affecting its performance of its obligations under the Call-Off Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Staff or any other failure in the Contractor’s supply chain.

“Framework Agreement” means the framework agreement entered into between the Contractor and the Authority pursuant to which the Customer and the Contractor have contracted for the Services.

“Framework Commencement Date” means the date of commencement of the Framework Agreement as set out in clause 2.1 of Section 2 of the Framework Agreement.

“General Anti-Abuse Rule” means:

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

- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

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

“Geographical Regions / Region” means the Geographical Regions as specified in within the Specification.

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

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

“HMRC” means HM Revenue & Customs.

“ICT Environment” means the Customer System and the Contractor System.

“Incident” means an occasion, which may or may not include an occurrence of Exotic Notifiable Disease, where the Services may be required at short notice (within six (6) to twelve (12) hours).

“Information” has the meaning given under section 84 of the FOIA.

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

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

“Invitation to Tender or ITT” means the Invitation to Tender for a Framework with Tender Reference 2252 issued on 25 October 2019 and all related documents published by the Authority and made available to the Contractor and other tenderers.

“IP Materials” has the meaning given to it in clause E7.1 (Intellectual Property Rights) of the Call-Off Contract.

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

“Key Personnel” mean any persons identified as key personnel in section 1 of the Order Form.

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

“Law” means law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Contractor is bound to comply.

“Lot” or “Lots” means the lot(s) in respect of which Services may be ordered from the Contractor and which are described in Schedule 2 to this Framework Agreement.

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

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

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

“Month” means calendar month.

“NICs” means National Insurance Contributions.

“Occasion of Tax Non-Compliance” means:

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

“OJEU Notice” means the contract notice [insert details] published in the Official Journal of the European Union.

“Outbreak” means an occurrence of Exotic Notifiable Disease at one or more premises.

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

“Order Form” has the meaning given to it in the Framework Agreement.

“Party” means either the Contractor or the Customer and **“Parties”** shall mean both.

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

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

“PPE” means Personal Protective Equipment

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

“Price” means the price (excluding any applicable VAT) payable to the Contractor by the Customer under the Call-Off Contract, as set out in section 2 of the Order Form for the full and proper performance by the Contractor of its obligations under the Call-Off Contract.

“Processor” has the meaning given in the GDPR.

“Prohibited Act” means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the 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 the Call-Off Contract;
- (c) an offence:
 - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;
 - ii) under legislation or common law concerning fraudulent acts; or
 - iii) the defrauding, attempting to defraud or conspiring to defraud the Customer;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

“Property” means the property, other than real property, issued or made available to the Contractor by the Customer in connection with the Call-Off Contract.

“Contractor” means the party appointed as a potential provider of Services as identified in section 1 to this Framework Agreement.

“Contractor Equipment” means the Contractor’s equipment, consumables, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under any Call-Off Contract.

“Contractor’s Representative” means any competent person appointed by the Contractor to be his representative in relation to the performance of any Call-Off Contract who will receive and act on any directions given by the Contract Manager.

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

“Purchase Order Number” means the purchase order number specified by the Customer in the Order Form.

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

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

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

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

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

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

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

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

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

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

“Selection Methodology” means the selection methodology set out in Schedule 2 to this Framework Agreement, to be applied for the award of Call-Off Contracts.

“Services” means the services set out in Section 1 of the Order Form (including any modified or alternative services).

“Specification” means the description of the Services to be supplied under the Call-Off Contract as set out in section 1 of the Order Form including, where appropriate, any Key Personnel, Premises and Quality Standards.

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

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

“Sub-Contractor” means a third party directly or indirectly contracted to the Contractor (irrespective of whether such person is an agent or company within the same group of companies as the Contractor) whose services and/or goods are used by the Contractor (either directly or indirectly) in connection with the provision of the Services, and **“Sub-Contract”** shall be construed accordingly.

“Tender” means the document submitted by the Contractor to the Authority in response to the Authority’s invitation to suppliers for formal offers to be appointed to the Framework Agreement.

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

“Third Party Software” means software which is proprietary to any third party which is or will be used by the Contractor to provide the Services including the software and which is specified as such in section 4 of the Order Form.

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

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

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

“Variation” means any variation to the Call-Off Contract.

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

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

In the Call-Off Terms, unless the context implies otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;

- (e) the words “other”, “in particular”, “for example”, “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Call-Off Contract;
- (g) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time; and
- (h) references to the Call-Off Contract are references to the Call-Off Contract as amended from time to time.

A2 The Customer’s Obligations

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

A3 Contractor’s Status

- A3.1 The Contractor shall be an independent contractor and nothing in the Call-Off Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Call-Off Contract.
- A3.2 The Contractor shall not (and shall ensure that any other person engaged in relation to the Call-Off Contract shall not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of the Customer.

A4 Notices and Communications

- A4.1 Subject to clause A4.3, if the Call-Off Terms state that a notice or communication between the Parties must be “written” or “in writing” it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Bravo.
- A4.2 If it is not returned as undelivered a notice served:
 - (a) in a letter is deemed to have been received 2 Working Days after the day it was sent; and
 - (b) in an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day

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

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

A5 Mistakes in Information

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

A6 Conflicts of Interest

- A6.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is 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 and the duties owed to the Customer under the provisions of the Call-Off Contract. The Contractor will notify the Customer without delay giving full particulars of any such conflict of interest which may arise.
- A6.2 The Customer may terminate the Call-Off Contract immediately by notice and/or take or require the Contractor to take such other steps it deems necessary if, in the Customer's reasonable opinion, 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 Call-Off Contract. The actions of the Customer pursuant to this clause A6 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

B. THE SERVICES

B1 Specification

- B1.1 In consideration of the Contractor supplying the Services the Customer shall pay the Price.

B2 Provision and Removal of Equipment

- B2.1 The Contractor shall provide all the Equipment and resource necessary for the supply of the Services.
- B2.2 The Contractor shall not deliver any Equipment to nor begin any work on the Premises without obtaining Approval.
- B2.3 All Equipment brought onto the Premises shall be at the Contractor's own risk 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.
- B2.4 Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.

- B2.5 If the cost of Equipment is reimbursed to the Contractor such Equipment shall be the property of the Customer and shall on request be delivered to the Customer as directed by the Customer. The Contractor will keep a full and accurate inventory of such Equipment and will deliver that inventory to the Customer on request and on completion of the Services.
- B2.6 The Contractor shall maintain all Equipment in a safe, serviceable and clean condition.
- B2.7 The Contractor shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
- (a) remove immediately from the Premises, Equipment which is, in the Customer's opinion, hazardous, noxious or not supplied in accordance with the Call-Off Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.
- B2.8 Within 20 Working Days of the End Date, 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 shall make good any damage to those Premises and any fixtures and fitting in the Premises which is caused by the Contractor or Staff.

B3 Service Delivery

- B3.1 The Contractor shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Service has not been specified in the Call-Off Contract, the Contractor shall agree the relevant standard of the Services with the Customer prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Call-Off Contract in accordance with the Law and Good Industry Practice.
- B3.2 The Contractor shall ensure that all Staff supplying the Services do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services. The Contractor shall ensure that those Staff are properly managed and supervised.
- B3.3 If the Specification includes installation of equipment the Contractor shall notify the Customer in writing when it has completed installation. Following receipt of such notice, the Customer shall inspect the installation and shall, by giving notice to the Contractor:
- (a) accept the installation; or
 - (b) reject the installation and inform the Contractor why, in the Customer's reasonable opinion, the installation does not satisfy the Specification.
- B3.4 If the Customer rejects the installation pursuant to clause B10.3(b), the Contractor shall immediately rectify or remedy any defects and if, in the Customer's reasonable opinion, the installation does not, within 2 Working Days or such other period agreed by the Parties, satisfy the Specification, the Customer may terminate the Call-Off Contract with immediate effect by notice.

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

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

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

B4 Key Personnel

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

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

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

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

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

B5 Contractor's Staff

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

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

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

- B5.2 At the Customer's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in to the Customer's Premises, specifying the capacities in which they are concerned with the Call-Off Contract and giving such other particulars as the Customer may reasonably request.
- B5.3 The decision of the Customer as to whether any person is to be refused access to the Customer's Premises and as to whether the Contractor has failed to comply with clause B5.2 shall be final.
- B5.4 The Contractor shall ensure that all Staff who have access to the Customer's Premises, the Customer System or the Customer Data have been cleared in accordance with the BPSS.

B6 Inspection of Premises

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

B7 Licence to Occupy Premises

- B7.1 Any land or Premises made available from time to time to the Contractor by the Customer in connection with the Call-Off Contract shall be on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Call-Off Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on termination of the Call-Off Contract.
- B7.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary for it to perform its obligations under the Call-Off 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.
- B7.3 Should the Contractor require modifications to the Customer's Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Contractor's expense. The Customer shall undertake approved modification work without undue delay.
- B7.4 The Contractor shall (and shall ensure that any Staff on the Customer's Premises shall) observe and comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when on the Customer's Premises as determined by the Customer.
- B7.5 The Call-Off Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Call-Off Contract, the Customer retains the right at any time to use the Premises owned or occupied by it in any manner it sees fit.

B8 Property

- B8.1 All Property is and shall remain the property of the Customer and the Contractor irrevocably licenses the Customer and its agents to enter 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 the Contractor shall at all times 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 it is clearly identifiable as belonging to the Customer.

- B8.2 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 5 Working Days of receipt.
- B8.3 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 Call-Off Contract and for no other purpose without Approval.
- B8.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Customer's reasonable security requirements as required from time to time.
- B8.5 The Contractor shall be liable for all loss of or damage to the Property, unless such loss or damage was caused by the Customer's negligence. The Contractor shall inform the Customer immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

B9 Offers of Employment

- B9.1 Except in respect of any transfer of Staff under TUPE, for the Contract Period and for 12 Months thereafter the Contractor shall not employ or offer employment to any of the Customer's staff who have been associated with the Services and/or the Call-Off Contract without Approval.
- B9.2 Clause B9.1 shall not apply if an individual has applied for a job advert made to the public at large.

B10 Employment Provisions

- B10.1 Not later than 12 Months prior to the end of the Contract Period, the Contractor shall fully and accurately disclose to the Customer all information that the Customer may reasonably request in relation to the Staff including the following:
 - (a) the total number of Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law;
 - (b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause B10.1 (a);
 - (c) the terms and conditions of employment/engagement of the Staff referred to in clause B10.1 (a), their job titles and qualifications;
 - (d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and

- (e) details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union.
- B10.2 At intervals determined by the Customer (which shall not be more frequent than once every 30 days) the Contractor shall give the Customer updated TUPE Information.
- B10.3 Each time the Contractor supplies TUPE Information to the Customer it shall warrant its completeness and accuracy and the Customer may assign the benefit of this warranty to any Replacement Contractor.
- B10.4 The Customer may use TUPE Information it receives from the Contractor for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably request.
- B10.5 If TUPE applies to the transfer of the Services on termination of the Call-Off Contract, the Contractor shall indemnify and keep indemnified the Customer and the Crown (both for themselves and any Replacement Contractor) against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:
 - (a) the provision of TUPE Information;
 - (b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Contract Period;
 - (c) any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Customer or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;
 - (d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
 - (e) any claim by any person who is transferred by the Contractor to the Customer and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
- B10.6 If the Contractor becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall notify the Customer and provide the Customer with up to date TUPE Information.
- B10.7 This clause B10 applies indefinitely.

- B10.8 The Contractor undertakes to the Customer that, during the 12 Months prior to the end of the Contract Period the Contractor shall not (and shall procure that any Sub-Contractor shall not) without Approval (such Approval not to be unreasonably withheld or delayed):
- (a) amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the Contractor and the Staff in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
 - (b) terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
 - (c) transfer away, remove, reduce or vary the involvement of any other Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse impact upon the delivery of the Services by the Contractor, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
 - (d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

C PAYMENT

C1 Price

- C1.1 In consideration of the Contractor's performance of its obligations under the Call-Off Contract, the Customer shall pay the Price in accordance with clause C2.

C2 Payment and VAT

- C2.1 The Contractor shall submit invoices to the Customer on the dates set out in the Order Form.
- C2.2 The Customer shall, in addition to the Price and following Receipt of a Valid Invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Call-Off Contract.
- C2.3 The Contractor shall add VAT to the Price at the prevailing rate as applicable and shall show the amount of VAT payable separately on all invoices as an extra charge. If the Contractor fails to show VAT on an invoice, the Customer will not, at any later date, be liable to pay the Contractor any additional VAT.
- C2.4 All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the Customer in writing.
- C2.5 Valid Invoices shall include:
- (a) the Contractor's full name, address and title of the Call-Off Contract;

(b) the Purchase Order Number

and, if requested by the Customer:

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

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

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

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

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

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

C2.11 If the Specification expressly provides that the Customer may be charged for plant which is on standby then in circumstances where plant was waiting to be transferred between Premises or where the Customer has instructed that the plant is retained on the Premises then a standby charge of 60% of agreed rates may be made in respect of such relevant periods if supported by timesheets.

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

- C2.13 The Customer shall not pay a stand-by rate if plant is on standby because no work was being carried out on the Premises at that time or no operator or other relevant staff were available (unless the standby is because the Contractor is awaiting licensing of the Premises on the Customer's instructions).
- C2.14 The Customer shall not pay for plant or equipment which is stood down during any notice period pursuant to clauses H1, H2 and/or H3 and the Contractor shall mitigate such costs as far as is reasonably possible, for example, by reutilising Staff, plant, materials and services on other contracts.
- C2.15 The Contractor may claim expenses only if they are clearly identified, supported by original receipts and Approved.
- C2.16 If the Customer pays the Contractor prior to the submission of a Valid Invoice this payment shall be on account of and deductible from the next payment to be made.
- C2.17 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Customer may recover this payment against future invoices raised or directly from the Contractor. All payments made by the Customer to the Contractor shall be on an interim basis pending final resolution of an account with the Call-Off Contractor in accordance with the terms of this clause C2.
- C2.18 The Customer shall pay all sums due to the Contractor within 30 days of Receipt of a Valid Invoice. Valid Invoices should be submitted for payment to:
- ssd.apdefra@defra.gsi.gov.uk (the Customer's preferred option); or
- Accounts Payable Team, Shared Services Directorate, Room 109, Lion House, Willowburn Trading Estate, Alnwick, Northumberland, NE66 2PF.
- C2.19 Any late payment of undisputed invoices by the Customer will be subject to interest at the rate of a maximum of 3% above the base rate from time to time of Barclays Bank plc.
- C2.20 If the Contractor enters into a Sub-Contract with a supplier for the purpose of performing its obligations under the Call-Off Contract, it shall ensure that a provision is included in the Sub-Contract which requires payment to be made of all sums due from it to the Sub-Contractor within 30 days from the receipt of a valid invoice.
- C2.21 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 Call-Off Contract. Any amounts due under this clause C2.21 shall be paid by the Contractor to the Customer not less than 5 Working Days before the date upon which the tax or other liability is payable by the Customer.
- C2.22 The Contractor shall not suspend the Services unless the Contractor is entitled to terminate the Call-Off Contract under clause H2.3 for failure to pay undisputed sums of money.
- C2.23 The Customer shall not pay an invoice which is not Valid Invoice.

C3 Recovery of Sums Due

- C3.1 If under the Call-Off Contract any sum of money is recoverable from or payable by the Contractor to the Customer (including any sum which the Contractor is liable to pay to the Customer in respect of any breach of the Call-Off 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 from the Customer under the Call-Off Contract or under any other agreement with the Customer or the Crown.
- C3.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Contractor shall make all 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.
- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Call-Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C4 Price During Extension of the Initial Contract Period

- C4.1 Subject to any terms set out in section 2 of the Order Form and clause F6 (Variation), the Price shall apply for the Initial Contract Period and until the end date of any extension or such earlier date of termination or partial termination of the Call-Off Contract in accordance with the Law or the Call-Off Contract.

D. STATUTORY OBLIGATIONS

D1 Prevention of Fraud and Bribery

- D1.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- D1.2 The Contractor shall not, during the Contract Period:
- (a) commit a Prohibited Act; and/or
 - (b) do or suffer anything to be done which would cause the Customer or any of its employees, consultants, contractors, sub-contractors or agents to contravene any of

the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

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

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

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

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

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

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

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

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

D2 Discrimination

D2.1 The Contractor shall:

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

D3 Rights of Third Parties

- D3.1 A person who is not a Party shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause D3 does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

D4 Environmental Requirements

- D4.1 The Contractor shall in the performance of the Call-Off Contract have due regard to the Customer's environmental, sustainable and ethical procurement policies ("**Environmental Policies**") which require the Customer through its procurement and management of suppliers:
- (a) conserve energy, water, wood, paper and other resources and reduce waste;
 - (b) phase out the use of ozone depleting substances;
 - (c) minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;
 - (d) minimise the use of products harmful to health and the environment such as hazardous substances and solvents, replacing them with more benign substances where feasible and, where such substances are necessary, to ensure that they are stored in properly labelled containers, used and disposed of in compliance with legal and regulatory requirements and any instructions from the Customer;
 - (e) reduce fuel emissions wherever possible;
 - (f) maximise the use of recovered materials and, if recycled materials are not suitable or not readily available, to maximise the use of materials taken from renewable sources; and
 - (g) promote the design of products that are capable of reuse or remanufacture or easily separable into recyclable parts consisting of one material (e.g. steel, plastic, textile).

D4.2 The Contractor shall ensure that any equipment and materials used in the provision of the Services do not contain:

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

unless given written permission by the Customer to do so.

D4.3 The Contractor shall conserve energy and water; reduce carbon emissions and other greenhouse gases; minimise the use of substances damaging or hazardous to health and the environment and reduce waste by, for example, using resources more efficiently and reusing, recycling and composting and respecting biodiversity.

D4.4 If required by the Customer the Contractor shall provide the Customer with information about its compliance with its obligations under clause D4.3.

D4.5 The Contractor shall ensure that its Staff are aware of the Customer's Environmental Policies.

D4.6 The Contractor shall:

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

D5 Health and Safety

D5.1 The Contractor shall perform its obligations under the Call-Off Contract in accordance with:

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

D5.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Customer's Premises of which it becomes aware and which relate to or arise in connection with the performance of the Call-Off Contract. The Contractor shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

E PROTECTION OF INFORMATION

E1 Customer Data

- E1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- E1.2 The Contractor shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Contractor of its obligations under this Call-Off Contract or as otherwise expressly authorised in writing by the Customer.
- E1.3 To the extent that Customer Data is held and/or Processed by the Contractor, the Contractor shall supply that Customer Data to the Customer as requested by the Customer in the format specified in the Specification.
- E1.4 The Contractor shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- E1.5 The Contractor shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored securely off-site. The Contractor shall ensure that such back-ups are made available to the Customer immediately upon request.
- E1.6 The Contractor shall ensure that any system on which the Contractor holds any Customer Data, including back-up data, is a secure system that complies with the HMG Security Policy Framework and is compliant with the security requirements in Schedule 7 of the Framework Agreement.
- E1.7 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Customer may:
 - E1.7.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Customer Data and the Contractor shall do so promptly; and/or
 - E1.7.2 itself restore or procure the restoration of Customer Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- E1.8 If at any time the Contractor suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Customer immediately and inform the Customer of the remedial action the Contractor proposes to take.

E2 Data Protection

- E2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation:
 - E2.1.1 the Customer is the Controller and the Contractor is the Processor of the Personal Data specified in Schedule 5 and/or as more particularly specified in an Order Form; and
 - E2.1.2 the Parties may provide each other with Personal Data relating to persons employed by them and their agents, suppliers and Sub-Contractors for purposes of administering the Call-Off Contract and each Party will be an independent Controller of such Personal Data

(because the Parties each, independently of each other, determine the means and purposes of processing such Personal Data).

- E2.2 Both Parties will duly observe all their obligations under the Data Protection Legislation which arise in connection with the Call-Off Contract.
- E2.3 Each Party will, prior to providing Personal Data of which it is the Controller to the other, be responsible for ensuring the Data Subject has received adequate privacy information in accordance with GDPR Article 13 to enable the receiving Party to process the Personal Data as permitted under clause E2.4 or E2.5 (as applicable).
- E2.4. The only processing of Personal Data specified in E2.1.1 that the Contractor is authorised to do is listed in Schedule 5 (and/or as more particularly specified in an Order Form) by the Customer and may not be determined by the Contractor. The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- E2.5 The only processing of Personal Data specified in clause E2.1.2 that the Parties are authorised to do is processing for purposes administration of the Call-Off Contract.
- E2.6 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- E2.6.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - E2.6.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - E2.6.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - E2.6.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- E2.7 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Call-Off Contract:
- E2.7.1 process that Personal Data only in accordance with Schedule 5 (and/or as more particularly specified in an Order Form) unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - E2.7.2 ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Customer may reasonably reject (but failure to reject shall not amount to approval by the Customer of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;

E2.7.3 ensure that:

(i) the Staff do not process Personal Data except in accordance with this Call-Off Contract (and in particular Schedule 5 (and/or as more particularly specified in an Order Form));

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:

- (A) are aware of and comply with the Contractor's duties under this clause;
- (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Contract; and
- (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

E2.7.4 not transfer Personal Data outside of the European Union unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with the GDPR Article 46 or LED Article 37) as determined by the Customer;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and

(iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

E2.7.5 at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Call-Off Contract unless the Contractor is required by Law to retain the Personal Data.

E2.8 Subject to clause E2.9 the Contractor shall notify the Customer immediately if, in relation to any Personal Data processed in connection with its obligations under this Call-Off Contract, it:

E2.8.1 receives a Data Subject Request (or purported Data Subject Request);

E2.8.2 receives a request to rectify, block or erase any Personal Data;

E2.8.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

E2.8.4 receives any communication from the Information Commissioner or any other regulatory authority;

E2.8.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

E2.8.6 becomes aware of a Data Loss Event.

- E2.9 The Contractor's obligation to notify under clause E2.8 shall include the provision of further information to the Customer in phases, as details become available.
- E2.10 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Call-Off Contract and any complaint, communication or request made under Clause E2.8 (and insofar as possible within the time scales reasonably required by the Customer) including by promptly providing:
- E2.10.1 the Customer with full details and copies of the complaint, communication or request;
 - E2.10.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - E2.10.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - E2.10.4 assistance as requested by the Customer following any Data Loss Event;
 - E2.10.5 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- E2.11 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- E2.11.1 the Customer determines that the processing is not occasional;
 - E2.11.2 the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - E2.11.3 the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- E2.12 The Contractor shall allow for audits of its Personal Data processing activity by the Customer or the Customer's designated auditor.
- E2.13 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- E2.14 Before allowing any Sub-processor to process any Personal Data related to this Call-Off Contract, the Contractor must:
- E2.14.1 notify the Customer in writing of the intended Sub-processor and processing;
 - E2.14.2 obtain the written consent of the Customer;
 - E2.14.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause E2 such that they apply to the Sub-processor; and

- E2.14.4 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- E2.15 The Contractor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- E2.16 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Call-Off Contract).
- E2.17 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Officer.
- E2.18 This clause E2 shall apply during the Contract Period and indefinitely after its expiry.

E3 Official Secrets Acts and Finance Act

- E3.1 The Contractor shall comply with the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
 - (b) section 182 of the Finance Act 1989.

E4 Confidential Information

- E4.1 Except to the extent set out in this clause E4 or if disclosure or publication is expressly permitted elsewhere in the Call-Off Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Call-Off Contract.
- E4.2 The Contractor hereby gives its consent for the Customer to publish the whole Call-Off Contract (but with any information which is Confidential Information belonging to the Customer redacted) including from time to time agreed changes to the Call-Off Contract, to the general public.
- E4.3 If required by the Customer, the Contractor shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Call-Off Contract. The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this clause E4.3.
- E4.4 If requested by the Customer, the Contractor shall give the Customer a copy of the list and, subsequently upon request by the Customer, copies of such of the listed non-disclosure agreements as required by the Customer. The Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor's confidentiality obligations under the Call-Off Contract.

- E4.5 The Contractor may only disclose the Customer's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- E4.6 The Contractor shall not, and shall procure that the Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Call-Off Contract.
- E4.7 Clause E4.1 shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
 - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - (c) such information was obtained from a third party without obligation of confidentiality;
 - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Call-Off Contract; or
 - (e) it is independently developed without access to the other Party's Confidential Information.
- E4.8 Nothing in clause E4.1 shall prevent the Customer disclosing any Confidential Information obtained from the Contractor:
- (a) for the purpose of the examination and certification of the Customer's accounts;
 - (b) for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
 - (c) to any Crown Body or any Contracting Customer and the Contractor hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority;
 - (d) to any consultant, contractor or other person engaged by the Customer
- provided that in disclosing information under clauses E4.8 (c) and (d) the Customer discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- E4.9 Nothing in clauses E4.1 to E4.6 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Call-Off Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.

- E4.10 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E4.6 is made aware of the Customer's obligations of confidentiality.
- E4.11 If the Contractor does not comply with clauses E4.1 to E4.6 the Customer may terminate the Call-Off Contract immediately on notice to the Contractor.
- E4.12 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Contractor shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- E4.13 The Contractor will immediately notify the Customer of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Contractor will co-operate with the Customer in any investigation as a result of any breach of security in relation to Confidential Information or data.
- E4.14 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Customer's request if the Customer reasonably believes the Contractor has failed to comply with clause E4.12.

E5 Freedom of Information

- E5.1 The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the EIR.
- E5.2 The Contractor shall transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt:
- (a) give the Customer a copy of all Information in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may specify) of the Customer's request;
 - (b) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIR;
 - (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Customer.
- E5.3 The Customer shall determine in its absolute discretion and notwithstanding any other provision in the Call-Off Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

E6 Publicity, Media and Official Enquiries

- E6.1 Without prejudice to the Customer's obligations under the FOIA, the EIR or any obligations under the Public Contracts Regulations 2006, or any policy requirements as to

transparency, neither Party shall make any press announcement or publicise the Call-Off Contract or any part thereof in any way, except with the written consent of the other Party.

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

E7 Security

- E7.1 The Customer shall be responsible for maintaining the security of the Customer's Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Customer while on the Customer's Premises, and shall ensure that all Staff comply with such requirements.
- E7.2 The Customer shall give the Contractor upon request copies of its written security procedures.
- E7.3 The Contractor shall, as an enduring obligation during the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- E7.4 Notwithstanding clause E7.3, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Customer Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency.
- E7.5 Any cost arising out of the actions of the Parties taken in compliance with clause E7.4 shall be borne by the Parties as follows:
- (a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Customer Data (whilst the Customer Data was under the control of the Contractor); and
 - (b) by the Customer if the Malicious Software originates from the Customer Software or Customer Data (whilst the Customer Data was under the control of the Customer).

E8 Intellectual Property Rights

- E8.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is:
- (a) furnished to or made available to the Contractor by or on behalf of the Customer;
 - (b) prepared by or for the Contractor on behalf of the Customer for use, or intended use, in relation to the performance by the Contractor of its obligations under the Call-Off Contract; or
 - (c) the result of any work done by the Contractor, the Staff or any Sub-Contractor in relation to the provision of the Services (together with clauses E8.1 (a) and (b) the "**IP Materials**")

shall vest in the Customer and the Contractor shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for performance by the Contractor of its obligations under the Call-Off Contract.

- E8.2 The Contractor hereby assigns to the Customer, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause E8.1(b) and (c). This assignment shall take effect on the date of the Call-Off Contract or (in the case of rights arising after the date of the Call-Off Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation and do all acts as are necessary to execute this assignment.
- E8.3 The Contractor shall waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Call-Off Contract or the performance of its obligations under the Call-Off Contract.
- E8.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Customer a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Customer an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Customer to sub-licence, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying goods and/or services to the Customer.
- E8.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified the Customer and the Crown from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer or the Crown may suffer or incur as a result of or in connection with any breach of this clause E8.5, except to the extent that any such claim results directly from:
- (a) items or materials based upon designs supplied by the Customer; or
 - (b) the use of data supplied by the Customer which is not required to be verified by the Contractor under any provision of the Call-Off Contract.
- E8.6 The Customer shall notify the Contractor in writing of any claim or demand brought against the Customer for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor to the Customer.
- E8.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Customer or the Contractor) arising from the performance of the Contractor's obligations under the Call-Off Contract ("**Third Party IP Claim**"), provided that the Contractor shall at all times:
- (a) consult the Customer on all material issues which arise during the conduct of such litigation and negotiations;
 - (b) take due and proper account of the interests of the Customer; and

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

E8.8 The Customer shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Contractor shall indemnify the Customer for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not be required to indemnify the Customer under this clause E8.8 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E8.5(a) or (b).

E8.9 The Customer shall not, without the Contractor's consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.

E8.10 If any Third Party IP Claim is made or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Customer and, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Customer under clauses E8.4 and G2.1(g)) use its best endeavours to:

- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or
- (b) procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Customer

and if the Contractor is unable to comply with clauses E8.10(a) or (b) within 20 Working Days of receipt by the Customer of the Contractor's notification the Customer may terminate the Call-Off Contract immediately by notice to the Contractor.

E8.11 The Contractor grants to the Customer a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Customer reasonably requires in order to exercise its rights under, and receive the benefit of, the Call-Off Contract (including, without limitation, the Services).

E9 Audit

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

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

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

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

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

E10 Tax Compliance

- E10.1 If, during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- (a) notify the Customer in writing of such fact within 5 Working Days of its occurrence; and
 - (b) promptly give the Customer:
 - i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
 - ii) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.
- E10.2 If the Contractor or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Call-Off Contract, the Contractor shall:
- (a) at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
 - (b) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Contractor or any Staff.

F. CONTROL OF THE CONTRACT

F1 Failure to meet Requirements

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

F2 Monitoring of Contract Performance

- F2.1 The Contractor shall immediately inform the Customer if any of the Services are not being or are unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.
- F2.2 At or around 6 Months from the Commencement Date and each anniversary of the Commencement Date thereafter (each being a "**Review Date**"), the Customer shall carry out a review of the performance of the Contractor ("**Checkpoint Review**"). Without prejudice to the generality of the foregoing, the Customer may in respect of the period under review consider such items as (but not limited to): the Contractor's delivery of the Services; the Contractor's contribution to innovation in the Customer; whether the Services provide the Customer with best value for money; consideration of any changes which may need to be made to the Services; a review of future requirements in relation to the Services and progress against key milestones.
- F2.3 The Contractor shall provide at its own cost any assistance reasonably required by the Customer to perform such Checkpoint Review including the provision of data and information.
- F2.4 The Customer may produce a report (a "**Checkpoint Review Report**") of the results of each Checkpoint Review stating any areas of exceptional performance and areas for improvement in the provision of the Services and where there is any shortfall in any aspect of performance reviewed as against the Customer's expectations and the Contractor's obligations under this Call-Off Contract.
- F2.5 The Customer shall give the Contractor a copy of the Checkpoint Review Report (if applicable). The Customer shall consider any Contractor comments and may produce a revised Checkpoint Review Report.
- F2.6 The Contractor shall, within 10 Working Days of receipt of the Checkpoint Review Report (revised as appropriate) provide the Customer with a plan to address resolution of any shortcomings and implementation of improvements identified by the Checkpoint Review Report.
- F2.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Contractor's failure to meet its obligations under this Call-Off Contract identified by the Checkpoint Review Report, or those which result from the Contractor's failure to meet the Specification of Requirements) shall be implemented at no extra charge to the Customer.

F3 Remedies for inadequate performance

- F3.1 If the Customer reasonably believes the Contractor has committed a Material Breach it may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:
- (a) without terminating the Call-Off Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor has demonstrated to the Customer's reasonable satisfaction that the Contractor will be able to supply the Services in accordance with the Specification;

- (b) without terminating the whole of the Call-Off Contract, terminate the Call-Off Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
 - (c) withhold or reduce payments to the Contractor in such amount as the Customer reasonably deems appropriate in each particular case; and/or
 - (a) terminate the Call-Off Contract in accordance with clause H2.
- F3.2 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Customer may charge the Contractor for any costs reasonably incurred and 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.
- F3.3 If the Customer reasonably believes the Contractor has failed to supply all or any part of the Services in accordance with the Call-Off Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Customer may give the Contractor notice specifying the way in which its performance falls short of the requirements of the Call-Off Contract or is otherwise unsatisfactory.
- F3.4 If the Contractor has been notified of a failure in accordance with clause F3.3 the Customer may:
 - (a) direct the Contractor to identify and remedy the failure within such time as may be specified by the Customer and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Customer within the specified timescale; and/or
 - (b) withhold or reduce payments to the Contractor in such amount as the Customer deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Customer.
- F3.5 If the Contractor has been notified of a failure in accordance with clause F3.3, it shall:
 - (a) use all reasonable endeavours to immediately minimise the impact of such failure to the Customer and to prevent such failure from recurring; and
 - (b) immediately give the Customer such information as the Customer may request regarding what measures are being taken to comply with the obligations in this clause F3.5 and the progress of those measures until resolved to the satisfaction of the Customer.
- F3.6 If, having been notified of any failure, the Contractor fails to remedy it in accordance with clause F3.5 within the time specified by the Customer, the Customer may treat the continuing failure as a Material Breach and may terminate the Call-Off Contract immediately on notice to the Contractor.

F4 Transfer and Sub-Contracting

- F4.1 Except where clauses F4.5 and F4.6 both apply, the Contractor shall not transfer, charge, assign, sub-contract or in any other way dispose of the Call-Off Contract or any part of it without Approval. All such documents shall be evidenced in writing and shown to the Customer on request. Sub-contracting any part of the Call-Off Contract shall not relieve the Contractor of any of its obligations or duties under the Call-Off Contract.
- F4.2 The Contractor shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Contractor shall provide each Sub-Contractor with a copy of the Call-Off Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Call-Off Contract.
- F4.3 The Contractor shall ensure that its Sub-Contractors and suppliers retain all records relating to the Services for at least 6 years from the date of their creation and make them available to the Customer on request in accordance with the provisions of clause E9 (Audit). If any Sub-Contractor or supplier does not allow the Customer access to the records then the Customer shall have no obligation to pay any claim or invoice made by the Contractor on the basis of such documents or work carried out by the Sub-Contractor or supplier.
- F4.4 If the Customer has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Customer, be sent by the Contractor to the Customer immediately.
- F4.5 Notwithstanding clause F4.1, the Contractor may assign to a third party (the “**Assignee**”) the right to receive payment of the Price or any part thereof due to the Contractor (including any interest which the Customer incurs under clause C2 (Payment and VAT)). Any assignment under this clause F4.5 shall be subject to:
- (a) reduction of any sums in respect of which the Customer exercises its right of recovery under clause C3 (Recovery of Sums Due);
 - (b) all related rights of the Customer under the Call-Off Contract in relation to the recovery of sums due but unpaid; and
 - (c) the Customer receiving notification under both clauses F4.6 and F4.7.
- F4.6 If the Contractor assigns the right to receive the Price under clause F4.5, the Contractor or the Assignee shall notify the Customer in writing of the assignment and the date upon which the assignment becomes effective.
- F4.7 The Contractor shall ensure that the Assignee notifies the Customer of the Assignee’s contact information and bank account details to which the Customer shall make payment.
- F4.8 The provisions of clause C2 shall continue to apply in all other respects after the assignment and shall not be amended without Approval.
- F4.9 Subject to clause F4.10, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Call-Off Contract or any part thereof to:
- (a) any Contracting Authority;

- (b) any other body established by the Crown or under statute in order substantially to 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 Call-Off Contract.

F4.10 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to clause F4.11, affect the validity of the Call-Off Contract and the Call-Off Contract shall bind and inure to the benefit of any successor body to the Customer.

F4.11 If the rights and obligations under the Call-Off Contract are assigned, novated or otherwise disposed of pursuant to clause F4.9 to a body which is not a Contracting Authority or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the **"Transferee"**):

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

F4.12 The Customer may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Call-Off Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Call-Off Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F4.13 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Call-Off Contract.

F5 Waiver

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

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

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

F6 Variation

- F6.1 Subject to the provisions of this clause F6, the Customer may request a Variation provided that such Variation does not amount to a material change.
- F6.2 The Customer may request a Variation by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Price is required in order to implement the Variation within a reasonable time limit specified by the Customer. If the Contractor accepts the Variation it shall confirm it in writing.
- F6.3 If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Price, the Customer may:
- (a) allow the Contractor to fulfil its obligations under the Call-Off Contract without the Variation to the Specification; or
 - (b) terminate the Call-Off Contract immediately except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).
- F6.4 Any Variation will not take effect unless recorded in a CCN and approved in writing by the Customer.
- F6.5 The provisions of clause F6.4 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Variation in order to address the emergency. In an emergency, Variations may be approved by a different representative of the Customer. However, the Authorised Representative shall have the right to review such a Variation and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Variation.

F7 Severability

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

F8 Remedies Cumulative

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

F9 Entire Agreement

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

F10 Counterparts

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

G LIABILITIES

G1 Liability, Indemnity and Insurance

- G1.1 Neither Party limits its liability for:
- (a) death or personal injury caused by its negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982;
 - (d) any breach of clause D1; or
 - (e) any liability to the extent it cannot be limited or excluded by Law.
- G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Customer and keep the Customer indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Call-Off 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 by any act or omission of the Contractor.
- G1.3 Subject to clause G1.1 the Contractor's aggregate liability in respect of the Call-Off Contract shall not exceed the sum set out in section 5 of the Order Form.
- G1.4 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 Call-Off Contract.
- G1.5 The Customer may recover from the Contractor the following losses incurred by the Customer to the extent they arise as a result of a Default by the Contractor:

- (a) any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional costs of procuring a Replacement Contractor for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Call-Off Contract;
- (d) any compensation or interest paid to a third party by the Customer; and
- (e) any fine or penalty incurred by the Customer pursuant to Law and any costs incurred by the Customer in defending any proceedings which result in such fine or penalty.

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

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

G1.7 Unless otherwise specified by the Customer, the Contractor shall, with effect from the Commencement Date for such period as necessary to enable the Contractor to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Call-Off 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. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 years following the end of the Call-Off Contract.

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

G1.9 The 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 appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

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

G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Call-Off Contract.

G1.12 The Contractor shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the

Contractor, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Contractor is an insured, a co-insured or additional insured person.

G2 Warranties and Representations

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

- (a) it has full capacity and authority and all necessary consents to enter into and perform the Call-Off Contract and that the Call-Off Contract is executed by a duly authorised representative of the Contractor;
- (b) in entering the Call-Off Contract it has not committed any fraud;
- (c) as at the Commencement Date, all information contained in the Tender or other offer made by the Contractor to the Customer remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Customer prior to execution of the Call-Off Contract and in addition, that it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Call-Off Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Call-Off Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the 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;
- (g) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Call-Off Contract;
- (h) any person engaged by the Contractor shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- (i) in the 3 years (or period of existence where the Contractor has not been in existence for 3 years) prior to the date of the Call-Off Contract:
 - i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

- iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Call-Off Contract;
- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Call-Off Contract; and
- (k) it has notified the Customer in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

G3 Force Majeure

- G3.1 Subject to the remaining provisions of this clause G3, a Party may claim relief under this clause G3 from liability for failure to meet its obligations under the Call-Off Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Contractor in performing its obligations under the Call-Off Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor.
- G3.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- G3.3 If the Contractor is the Affected Party, it shall not be entitled to claim relief under this clause G3 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by any of the Services, but the Contractor has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Call-Off Contract.
- G3.4 Subject to clause G3.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- G3.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- G3.6 If, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with the Call-Off Contract, then during the continuance of the Force Majeure Event:

- i) the other Party shall not be entitled to exercise its rights to terminate the Call-Off Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
 - ii) neither Party shall be liable for any Default arising as a result of such failure;
 - (b) the Contractor fails to perform its obligations in accordance with the Call-Off Contract it shall be entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of the Call-Off Contract during the occurrence of the Force Majeure Event.
- G3.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Call-Off Contract.
- G3.8 Relief from liability for the Affected Party under this clause G3 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Call-Off Contract and shall not be dependent on the serving of notice under clause G3.7.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

- H1.1 The Customer may terminate the Call-Off Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a company and in respect of the Contractor:
- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
 - (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;

- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- (g) being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Customer may terminate the Call-Off Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor’s creditors;
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor’s bankruptcy;
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor’s assets and such attachment or process is not discharged within 14 days;
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- (h) any event similar to those listed in clauses H1.2(a) to (g) occurs under the law of any other jurisdiction.

H1.3 The Contractor shall notify the Customer immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including where the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 (“**Change of Control**”). The

Customer may terminate the Call-Off Contract with immediate effect by notice and without compensation to the Contractor within 6 Months of:

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

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

H1.4 The Customer may terminate the Call-Off Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a partnership and:

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
- (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- (f) any of the following occurs in relation to any of its partners:
 - (i) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
 - (ii) a petition is presented for his bankruptcy; or
 - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets;
- (g) any event similar to those listed in clauses H1.4(a) to (f) occurs under the law of any other jurisdiction .

H1.5 The Customer may terminate the Call-Off Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a limited liability partnership and:

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

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

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

H2 Termination on Default

H2.1 The Customer may terminate the Call-Off Contract with immediate effect by notice if the Contractor commits a Default and:

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

H2.2 If, through any Default of the Contractor, data transmitted or processed in connection with the Call-Off 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.

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

H3 Termination on Notice

- H3.1 The Customer may terminate the Call-Off Contract at any time by giving the Contractor the number of days' notice set out in section 6 of the Order Form.

H4 Consequences of Expiry or Termination

- H4.1 If the Customer terminates the Call-Off Contract under clause H2 and makes other arrangements for the supply of the 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.
- H4.2 If Call-Off Contract is terminated under clause H2 the Customer shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Call-Off Contract but where the payment has yet to be made by the Customer), until the Customer has established the final cost of making the other arrangements envisaged under this clause.
- H4.2 If the Customer terminates the Call-Off Contract under clause H3 the Customer shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Call-Off Contract but where the payment has yet to be made by the Customer.
- H4.3 Save as otherwise expressly provided in the Call-Off Contract:
- (a) termination or expiry of the Call-Off Contract shall be without prejudice to any rights, remedies or obligations accrued under the Call-Off Contract prior to termination or expiration and nothing in the Call-Off Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
 - (b) termination of the Call-Off Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Data Protection Act Compliance), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit), F9 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H5 Disruption

- H5.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Call-Off Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.

- H5.2 The Contractor shall immediately inform the Customer of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Call-Off Contract.
- H5.3 If there is industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Call-Off Contract.
- H5.4 If the Contractor's proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Customer acting reasonably, then the Call-Off Contract may be terminated with immediate effect by the Customer by notice.
- H5.5 If the Contractor is unable to deliver the Services owing to disruption of the Customer's normal business, the Contractor may request a reasonable allowance of time, and, in addition, the Customer will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

H6 Recovery upon Termination

- H6.1 On termination of the Call-Off Contract for any reason, the Contractor shall at its cost:
- (a) immediately return to the Customer all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-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 in good working order;
 - (c) immediately vacate any Customer Premises occupied by the Contractor;
 - (d) assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and
 - (e) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Service have been provided and/or for the purpose of allowing the Customer and/or the Replacement Contractor to conduct due diligence.
- H6.2 If the Contractor does not comply with clauses H6.1(a) and (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 suppliers or Sub-Contractors where any such items may be held.

H7 Retendering and Handover

- H7.1 Within 21 days of being requested by the Customer, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Customer to issue tender documents for the future provision of the Services.

- H7.2 The Customer shall take all necessary precautions to ensure that the information referred to in clause H7.1 is given only to potential providers who have qualified to tender for the future provision of the Services.
- H7.3 The Customer shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Customer; and that they shall not use it for any other purpose.
- H7.4 The Contractor shall indemnify the Customer against any claim made against the Customer at any time by any person in respect of any liability incurred by the Customer arising from any deficiency or inaccuracy in information which the Contractor is required to provide under clause H7.1.
- H7.5 The Contractor shall allow access to the Premises in the presence of the Authorised Representative, to any person representing any potential provider whom the Customer has selected to tender for the future provision of the Services.
- H7.6 If access is required to the Contractor's Premises for the purposes of clause H7.5, the Customer shall give the Contractor 7 days' notice of a proposed visit together with a list showing the names of all persons who will be visiting. Their attendance shall be subject to compliance with the Contractor's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- H7.7 The Contractor shall co-operate fully with the Customer during any handover at the end of the Call-Off Contract. This co-operation shall include allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- H7.8 Within 10 Working Days of being requested by the Customer, the Contractor shall transfer to the Customer, or any person designated by the Customer, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Customer.

H8 Exit Management

- H8.1 Upon termination the Contractor shall render reasonable assistance to the Customer to the extent necessary to effect an orderly assumption by a Replacement Contractor in accordance with the following procedure set out in clause H9.

H9 Exit Procedures

- H9.1 Where the Customer requires a continuation of all or any of the Services on expiry or termination of the Call-Off Contract, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the Customer and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
- H9.2 The following commercial approach shall apply to the transfer of the Services if the Contractor:

- (a) does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Price; or
- (b) reasonably incurs additional costs, the Parties shall agree a Variation to the Price based on the Contractor's rates either set out in Schedule 3 or forming the basis for the Price.

H9.3 When requested to do so by the Customer, the Contractor shall deliver to the Customer details of all licences for software used in the provision of the Services including the software licence agreements.

H9.4 Within one Month of receiving the software licence information described above, the Customer shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the Customer a plan for licence transfer.

H10 Knowledge Retention

H10.1 The Contractor shall co-operate fully with the Customer in order to enable an efficient and detailed knowledge transfer from the Contractor to the Customer on the completion or earlier termination of the Call-Off Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Contractor shall provide the Customer free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Customer. The Contractor shall comply with the Customer's request for information no later than 15 Working Days from the date that that request was made.

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

I1.1 Subject to the provisions of clause I2 the Call-Off Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not limit the right of the Customer to take proceedings against the Contractor in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

I2 Dispute Resolution

I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Call-Off Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Contractor and the commercial director of the Customer.

- 12.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 12.3 If the dispute cannot be resolved by the Parties pursuant to clause 12.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 12.5 unless: (a) the Customer considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- 12.4 The obligations of the Parties under the Call-Off Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Call-Off Contract at all times.
- 12.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
 - (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;
 - (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
 - (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
 - (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Call-Off Contract without the prior written consent of both Parties; and
 - (f) if the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 12.6.
- 12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:

- (a) The Customer may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7;
- (b) if the Contractor intends to commence court proceedings, it shall serve notice on the Customer of its intentions and the Customer shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7; and
- (c) the Contractor may request by notice to the Customer that any dispute be referred and resolved by arbitration in accordance with clause I2.7, to which the Customer may consent as it sees fit.

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

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Customer shall give a notice of arbitration to the Contractor (the “**Arbitration Notice**”) stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- (b) the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7(b) shall be applied and are deemed to be incorporated by reference to the Call-Off Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Customer under clause I2.7(a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the arbitration proceedings shall take place in London and in the English language; and
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

SCHEDULE 2 – SPECIFICATION OF REQUIREMENTS

1. Background

- 1.1 The Authority is the United Kingdom (UK) Government Department responsible for the environment, food and farming and rural affairs. The Authority's priorities are to secure a healthy natural environment; a sustainable, low-carbon economy; a thriving farming sector and a sustainable, healthy and secure food supply. Further information on the Authority can be found at: <https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs>.
- 1.2 The Authority is committed to ensuring the UK remains a world-leading food and farming nation based on high standards of animal health and welfare. As a part of this, one of the Authority's key objectives is to ensure our country is well protected against natural threats and hazards. The Authority takes the lead on planning for and responding to incidents or occurrences (Outbreaks) of notifiable pests and diseases of animals (in England and Wales) and plants (in England).
- 1.3 Exotic diseases are diseases which are not normally present in the UK and are constantly present in various countries worldwide and becoming newly established in others. The risk of these diseases infecting animals in the UK is usually low, but the threat continues and cannot be eliminated.
- 1.4 Endemic diseases are those already present within the UK. Endemic diseases have the potential to result in substantial economic loss to industry and can have a significant impact upon animal welfare.
- 1.5 There are many plant pests and diseases which if they were to become established in the UK could cause serious damage to our crops, forestry and the wider environment. Official controls and restrictions on the import, movement and keeping of plants, plant pests and other material (e.g. soil) are vital to help prevent the introduction and spread of harmful organisms.
- 1.6 Quantitative modelling enhances the Authority's evidence base and provides additional specialist advice upon which policy decisions are taken. The main contribution of models to date has been towards the development and modification of disease prevention and control policy, proactively as well as in response to Outbreaks. In doing so, quantitative modelling informs policies that support the protection of public health, the environment and the economy from animal and plant pests and diseases which in turn enables a sustainable, secure and healthy food supply. It also ensures that the Authority is better prepared to deal swiftly and efficiently with emergencies in its areas of responsibility.

2. Scope

- 2.1 The Contractor is appointed to the animal and Plant Health Modelling Services Framework to supply animal and plant health modelling expertise and services via:

a) Lot 1 – Animal Health Modelling Services

b) Lot 2 – Plant Health Modelling Services

- 2.2 Both Lots are intended to be used in both emergency and non-emergency situations. The relevant Call-Off processes which will apply are described in section 11 of this Specification of Requirements.
- 2.3 Modelling and analytical requirements are for the whole of the UK. The Contractor may be required to perform analysis at a country level, government level, regional level or county level.
- 2.4 This Framework replaces the Quantitative Modelling Standing Capacity (QMSC), reference 21334. This was the Authority's previous framework for animal and plant health modelling services which expired in June 2019.

3. General Service Requirements

- 3.1 The Framework will give the Authority access to quantitative modelling capability and tools for animal and plant pest and disease modelling and expert analysis to meet occasional ad hoc policy requests. The Authority requires the Contractor to be available to respond to emergency situations in the form of expert consultation and/or input to modelling exercises. The purpose of carrying out this analysis is to inform policy decisions which may need to be made quickly, sometimes based on evidence that is not complete.
- 3.2 In an Outbreak, Lot 1 (Animal Health) Services may be required at short-notice (within 48 hours). Lot 2 (Plant Health) Services may also be required to support an Outbreak but usually with a longer lead-in time of more than 48 hours.
- 3.3 Outlined below is a list of potential uses of the Framework:
- 3.3.1 *Expert advice* – Provision of veterinary technical and scientific evidence in relation to epidemiological, pest and disease spread and other forms of dispersion, economic and wildlife population modelling and in response to specific questions on a developing policy in peacetime and Outbreaks. Provision of advice and evidence will be used to support a policy team in identifying options.
 - 3.3.2 *Policy development and review* – For example testing specific policy options, such as Foot and Mouth Disease (FMD) or Bluetongue vaccination strategies or sheep identification and cost/benefit analysis of disease control strategies. For plant health this may include cost/benefit of control strategies such as Phytophthora Ramorum or for the development of policy options for specific pests for example Emerald Ash Borer.
 - 3.3.3 *Impact assessments* – For example, the exploration of the impact of different sheep identification and movement systems or standstill regimes on disease control, in order to estimate the expected benefits as part of the assessment of options for implementing new legislation.

- 3.3.4 *Lessons identified/Contingency planning* – Based on the modelling of past epidemics, models can be used to answer questions of the type “what if this had been done differently?”. The answers to these questions may inform adjustment of control policies and/or contingency plans for tackling future Outbreaks (a model which reproduces a range of possible scenarios can be used).
- 3.3.5 *Resource planning* – models of epizootics / epidemics and their control can be used to estimate resource requirements so that these may be planned for. Resource planning is part of contingency planning, but models may also be useful real-time tools and may be used to predict the scale of increase in resource requirements in specific situations.
- 3.3.6 *Economic impact assessment* – Economic impact assessment of animal diseases must be based on quantitative physical information about the impact of the disease. Such physical information might be data reported from an actual past Outbreak but in order to contribute to future policy decisions and disease management planning it is likely to arise from a combination of expert opinion and epidemiological modelling. Diseases could be exotic such as FMD or African Swine Fever (ASF) or endemic such as Salmonella or Porcine Reproductive and Respiratory Syndrome (PRRS).
- 3.3.7 *Training and exercises* – models can be used as “virtual Outbreak simulators” for training purposes.
- 3.3.8 *Surveillance targeting* – a specific type of model which attempts to quantify the risk of disease arising in different circumstances (risk model) can be used to indicate where it is most beneficial to target surveillance efforts. This is particularly important where resources are limited.
- 3.3.9 *Retrospective analysis* – where good data is available from past epizootics/epidemics, models can be constructed as an aid to understanding the dynamics of the epidemic (requires a model to mimic a specific real-life epidemic).
- 3.3.10 *Emergency response* – where a disease incident or Outbreak is in progress.
- 3.4 Government distinguishes quantitative modelling from quantitative risk analysis in terms of application and the range of techniques applied. Namely, quantitative risk analysis identifies hazards and helps formulate risk management measures whereas quantitative modelling covers a wider range of applications e.g. predicting the likely size and extent of an epidemic from its current status, regulatory impact assessments, retrospective analysis and scenario generation, as well as risk analysis. Modelling will also often be dynamic so that it can predict possible future states from the current state of a system, allowing it to use its own outputs as inputs for further modelling.

Lot Specific Requirements: Lot 1 – Animal Health Modelling Services

4. Lot 1 Overview

- 4.1 Lot 1 covers the provision of modelling services and expertise for animal health. This may include expertise in areas such as species distribution, movement dynamics and host interaction. The Authority and/or Contracting Bodies may require some or all of the Services outlined in relation to government’s current or future policy interests in animal health. Current exotic diseases of interest include, but are not limited to, Foot and Mouth Disease, ASF,

Classical Swine Fever, Vector Borne including Bluetongue Virus and African Horse Sickness, Avian Influenza, Swine Vesicular Disease, Newcastle Disease and Equine Infectious Anaemia. Modelling of endemic diseases such as Salmonella or PRRS may also be required.

- 4.2 The purpose of Lot 1 of this Framework is to provide access to quantitative animal health modelling capability and expert advice for domestic animals and wildlife hosts in the form of a Consortium of Modelling Expertise. This will provide quantitative modelling knowledge, tools and techniques which are available to be applied potentially at short-notice, for example, to respond in an emergency or to answer an ad hoc policy request.
- 4.3 A secondary purpose of the animal health lot is to bring modelling groups and analysts closer to government for the purposes of sharing data and improving the modellers' understanding of data, in both cases to enhance the quality of model outputs. The purpose of this is to avoid situations where modellers publish misleading outputs based on false assumptions or a misunderstanding of the data used.
- 4.4 The Contractor may or may not have access to their own disease simulation tool(s) and/or Disease Investigation packages DIP(s), including models developed for other purposes (those that may have the potential to be applied to disease investigation and/or management). The Contractor shall, as a minimum, provide modelling expertise and consultancy in the form of contributions to a Modelling Consortium of Expertise to be hosted by the Animal and Plant Health Agency (APHA).
- 4.5 Although the primary contact will be with APHA, the Contractor will have opportunities to regularly engage with the Authority and Devolved Administration policy and evidence teams on relevant modelling work and current disease priorities. The Contractor will have the opportunity to work with APHA Epidemiology and Risk Policy Advice team (ERPA); the APHA, Biomathematics and risk research group within the Department for Epidemiological Sciences (DES); the APHA Wildlife epidemiology and modelling group, the National Emergency Epidemiology Group (NEEG); and the APHA Field Epidemiology team.
- 4.6 The Customer will, where possible, provide information on the datasets available and the information contained within these and will work with the data owner and the Contractor to facilitate the release of relevant datasets where possible and as required. These will be subject to appropriate Confidentiality Agreements, Data Sharing Protocols being set-up and in accordance with GDPR, and as determined by APHA.
- 4.7 There will be opportunities for engagement between the Contractor and Defra Economists as necessary so that modelling takes consideration of, and (where relevant), includes assessment of economic impacts.
- 4.8 The Customer will host regular (up to four per annum) Consortium of Modelling Expertise meetings, during which current issues will be discussed and collaborative opportunities identified. Attendance at these meetings is voluntary and at the Contractor's cost.

- 4.9 The Contractor may have the opportunity to collaborate in ad-hoc modelling and engagement exercises for policy development and/or Outbreak preparedness and response purposes.

5. Lot 1 Service Requirements

5.1 The Contractor shall:

- 5.1.1 Provide modelling expertise and consultancy in the form of contributions to a Modelling Consortium of Expertise to be hosted by APHA up to 4 times per annum;
- 5.1.2 Provide expertise in areas such as but not limited to species distribution, movement dynamics and host interaction;
- 5.1.3 Where applicable, provide Services in relation to one or more of the diseases listed under 4.1 above;
- 5.1.4 Where applicable, provide some or all of the Services outlined in relation to government's current or future policy interests in animal health.

5.2 When undertaking modelling work for the Authority, whether called-off in peacetime (i.e. not related to an emergency or Outbreak) or an Outbreak the Contractor shall:

- 5.2.1 Confirm that the disease simulation model(s) is fit for purpose and appropriate for use for the specific request being commissioned.
- 5.2.2 Provide a summary document setting out model limitations, strengths, and appropriateness of use. The Contractor shall be responsible for updating the summary document as necessary;
- 5.2.3 Provide evidence of quality assurance activities (for example but not limited to peer reviews, and workshops with experts) to ensure that the models meet the Customer's quality assurance requirements; Quality assurance must be in line with relevant guidance from, but not limited to, the [AQUA book](#) and the [Code of Practice for Official Statistics](#). Quality assurance must also be in line with any relevant academic principles of quality.
- 5.2.4 Populate and maintain their model(s) with relevant data, so that outputs can be rapidly generated;
- 5.2.5 Be responsible for ensuring that their model(s) is able to accept disease Outbreak reporting data in the format agreed in the Research Data Sharing Protocol.

5.3 If Services are required to support an Outbreak response, the Contractor shall:

- 5.3.1 Be willing to respond to an urgent Mini Competition, potentially within 48 hours, to inform disease control policies as per capability i.e. have existing and fit for purpose models for the diseases of interest to the Authority and/or Customer;
- 5.3.2 Make every effort to be available to the NEEG and at a minimum provide advice at the earliest opportunity. The Authority accepts that this does not necessarily mean that the Contractor will be available to undertake work. Likewise, an "on-call" facility is not required;
- 5.3.3 Analyse models to generate recommendations for the control of current Outbreaks. For example, the Contractor may be required to identify situations when vaccination

would or would not be recommended, or identify optimum policies for the deployment of vaccination; providing scientific advice and reporting to the NEEG.

- 5.3.4 Make representatives available to attend Authority meetings in person, and be available to work from the National Disease Control Centre (NDCC) in London, Cardiff, Edinburgh or Ballykelly/Belfast if required.
- 5.4 The Contractor may also be invited to participate in an expert consultative forum for modelling convened on an ad-hoc basis during an Outbreak. The Contractor's role in this instance will be to provide expertise on modelling including; how modelling may assist the Outbreak response; interpretation of modelling results for a policy context which may include results from more than one model; and a challenge function to modelling procured.
- 5.5 If a Call-Off Contract for Modelling Services is awarded to the Contractor and the requirement relates to supporting an Outbreak response, the Contractor shall:
 - 5.5.1 Report model outputs in a wide variety of formats, and to different timescales (to be specified by the Customer at the time of Call-Off). During an Outbreak, reporting may be required in a wide variety of formats depending on the nature of the work undertaken, for example; emails, short briefing papers or longer and more detailed reports with data analysis supported by tables and graphical outputs. In addition to this, verbal reporting and progress updates may be requested to be provided via teleconference. If a specific piece of modelling work is commissioned during an Outbreak, the Contractor is not required to work at the location of the NDCC unless it is mutually beneficial to both parties.
 - 5.5.2 Communicate model assumptions and limitations clearly.
 - 5.5.3 Maintain regular contact with the Customer, via defined and agreed routes of communication (normally via the NEEG), once notification of an Outbreak has been confirmed. The Customer will be in daily (as a minimum) email contact with all Contractors (regardless of whether a Call-Off Contract is placed) to make all Contractors aware of the current situation in relation to an Outbreak, thereby allowing for a more timely response to any urgent Call-Off requirements that are identified.
- 5.6 The Contractor will also be required to participate in lessons learned sessions and any other close-down activities at the end of the Outbreak.
- 5.7 Outside of an Outbreak as part of policy development and engagement activities, the Contractor shall:
 - 5.7.1 Be willing to respond to ad hoc requests for modelling work as per the Contractor's capability and expertise;
 - 5.7.2 Be willing to attend and contribute to regular (up to 4 per annum) Consortium of Modelling Expertise meetings with modelling stakeholders, including the animal disease policy teams, ERPA, APHA Biomathematics and risk research group, APHA wildlife epidemiology and modelling team, APHA Field Epidemiology team, and representatives from the NEEG;

- 5.7.3 Be willing to participate in Outbreak exercises as required and determined by the Authority;
- 5.7.4 Maintain comprehensive (up-to-date and relevant) knowledge and understanding of UK agriculture industry and practices based on established working relationships/active business contacts. Evidence of this could include (but is not limited to) details of consultancy or research contacts, publications and reports, conferences, training, etc.

5.8 The Contractor may also be invited to:

- 5.8.1 Participate in the evaluation of other models and model outputs, including peer review of any work undertaken e.g. by other Contractors.
- 5.8.2 Respond to requests to develop new models which can interface with existing modelling tools and/or adapt models so they can be applied to simulations of the government's current contingency plans.
- 5.8.3 Engage with other organisations to ensure specialist input from other disciplines, including other institutions. This will require the Contractor to seek advice/involvement of others and communicate clearly and effectively with them to develop more useful scenarios.

Lot Specific Requirements: Lot 2 – Plant Health Modelling Services

6. Lot 2 Overview

- 6.1 Quantitative modelling for plant health contributes to the evidence base required by government to assess risk and manage outbreaks of pest and disease. Recent policy interests include but are not limited to Phytophthora Ramorum, Phytophthora Kernoviae, Chalara, Oak Processionary Moth, Emerald Ash Borer, Xylella Fastidiosa, Acute Oak Decline, Varroa and Asian Hornet.
- 6.2 An assigned budget is available for plant health modelling and may be used to fund one or two larger projects or a series of small projects. The distribution of the budget will be determined annually based on the needs of policy and operations.
- 6.3 The Contractor shall provide Modelling Services in relation to one (as a minimum) or more of the pests/diseases listed above. The Contractor must have access to their own pest/disease simulation tool(s). The Authority may also ask Contractors to develop models for new priority pests and diseases as identified by prioritisation activities, such as the Plant Health Risk Register (PHRR). The Contractor's pest/disease simulation model(s) should be applicable to as wide a range of questions about the spread and control of pest/disease outbreak as possible.

7. Lot 2 Service Requirements

- 7.1 Throughout the duration of the Framework, the Contractor shall:
 - 7.1.1 Populate and maintain their model(s) with relevant data, so that outputs can be rapidly generated in an emergency.

- 7.1.2 Provide a model summary document as part of each project which sets out the limitations, the strengths, what the model can be used for and how the model works. The summary document should be provided following development and running of the model to provide indicative results to policy and operational colleagues. Following acceptance in draft, the summary document should form part of a final report. The Contractor shall be responsible for updating the summary document as necessary.
 - 7.1.3 Maintain access and interoperability with any relevant data sources that have been used to support or run the model. This may include, but is not limited to, Forestry Commission data, meteorological data, and, surveillance data.
 - 7.1.4 Abide by data sharing protocols; to facilitate modelling during an outbreak, the Contractor shall be provided with relevant datasets by the Authority in a suitable format on a regular basis, determined by the Authority at the time of issue. The Contractor shall then use these datasets to populate their models. The Contractor shall ensure that they access and use the datasets in accordance with any data sharing protocols set by the data owners.
 - 7.1.5 Where possible, maintain or develop models which, with little associated cost, can be modified to cover other priority pests and diseases. Examples include where the basic structure of a model can be modified to fit another pest from that for which it was originally intended.
- 7.2 The Contractor may be required to respond to Mini Competitions for a variety of non-emergency requirements, including but not limited to the following examples:
- 7.2.1 Respond to ad hoc modelling requests using existing models. For example, this may be for informing policy development and review, for testing specific policy options and for providing up-to-date predictions for policy development. This may involve periodic development of existing models in response to emerging requirements.
 - 7.2.2 Respond to requests to develop new models which can interface with existing modelling tools in the market, for example, meteorological models, and/or adapt models so they can be applied to simulations of the Authority's current contingency plans.
 - 7.2.3 Participate in the evaluation of other models and model outputs, including peer review of any work undertaken e.g. by other suppliers.
 - 7.2.4 Attend workshops/events relevant to improving understanding of the data or the policy context around a particular disease.
 - 7.2.5 Organise quality assurance activities (e.g. peer reviews, workshops with experts) to ensure that the models meet the Authority's quality assurance requirements. Quality assurance must be in line with relevant guidance from, but not limited to, the [AQUA book](#) and the [Code of Practice for Official Statistics](#). Quality assurance must also be in line with any relevant academic principles of quality.
 - 7.2.6 Engage with other organisations to ensure specialist input from other disciplines, including other institutions. This will require the Contractor to seek advice/involvement of others and communicate clearly and effectively with them to develop more useful scenarios.

8. Performance Management Framework

- 8.1 As part of the Authority's continuous drive to improve the performance of all contracts, this Performance Management Framework will be used to monitor, measure and control all aspects of the Contractor's performance of contract responsibilities under the Call-Off Contract.
- 8.2 The purpose of this Performance Management Framework is to set out the obligations on the Contractor, to outline how the Contractor's performance will be evaluated and to detail the sanctions for performance failure. The Contractor is responsible for the performance of any sub-contractors.
- 8.3 The use of a strong service credit regime accompanied by a proactive approach to correcting failures and addressing their cause improves the relationship and enables a partnership rather than a confrontational style of working. Its focus is on managing and improving service. It is not about taking cost out of the service.
- 8.4 Key Performance Indicators (KPIs) are set out at Table A below. They will be monitored on a monthly, quarterly or annual basis as appropriate to the Service and will form part of the Contract Performance Review.
- 8.5 The Authority will be entitled to refine, vary or modify the KPIs, performance standards and service credits from time to time during the Contract Period through a variation to be agreed with the Contractor using a Contract Change Note (CCN).
- 8.6 Where a KPI has a percentage measure, the Contractor's performance will be rounded to the nearest whole number.
- 8.7 The Authority will produce an annual Performance Management report, to be sent to the Contractor, detailing the Contractor's performance against KPIs. This will cover any training or deployment Call-Offs which have taken place during the period.
- 8.8 The Contractor will maintain their own management reports, including Issues Log, which will include detail on periodic checks to ensure quality.
- 8.9 Any performance issues highlighted in the reports will be addressed by the Contractor, who may be required to provide an improvement plan to address all issues highlighted within a week of receipt of the report. Performance management reports and KPI performance will be a key feature of any Contract Review meetings.
- 8.10 Where performance failure attributable to the Contractor is identified in the Performance Management report and relates to the KPIs then the service credit regime may apply, at the sole discretion of the Authority.

9. Service Credits

- 9.1 The use of service credits is governed by the following principles:

- 9.2 Service credits sit within the wider service management approach being pursued by the Contractor and the Customer. Use of service credits does not preclude any other remedy for failure of performance available to the Customer under the terms and conditions of the Call-Off Contract.
- 9.3 The service credit regime will be instigated on each occasion when there is a service failure within the performance monitoring period. Failure to meet a KPI may also give rise to a remediation plan.
- KPIs with a service credit rating of 0 will have no associated service credit
 - KPIs with a service credit rating of 1 will have a service credit of 3% of the invoice amount for the associated Call-Off Contract value applied for each KPI failure
 - KPIs with a service credit rating of 2 will have a service credit of 5% of the invoice amount for the Call-Off Contract value (the applicable quarterly period), applied for each KPI failure.
 - The maximum annual service credit to be applied will be no more than 10% of the total Call-Off Contract value.
- 9.4 The Contractor will provide the Authority with the information listed in the Specification and such other supporting information as the Authority may reasonably request in order to determine the proper application of any service credits due.
- 9.5 For services where the Contractor is paid by the Authority, service credits will be paid to the Authority as a credit note to the next invoice, or if no invoice is due within 30 days of a performance report, then the Contractor will issue a bespoke credit note to the Authority.
- 9.6 For services where the Contractor recovers costs directly, service credits will be paid to individual users of the service as a credit note to their next invoice. The Contractor will propose how the service credit amounts will be applied to each user of the service.
- 9.7 The full, agreed service credit regime will operate from the initial delivery date until the end of the Contract Period. At the end of the first complete performance monitoring period, the Authority and the Contractor will enter into good faith discussions to review the KPIs and assess their effectiveness. The KPIs may be adjusted to ensure that they are appropriate and achievable.

10. Governance and Contract Management

- 10.1 The Contractor shall appoint a nominated person of appropriate grade to be the Contractor's Authorised Representative to manage the provision of the Service and to liaise with the

Authority as required. At any meeting it will be assumed the Contractor's Authorised Representative will be authorised to make critical decisions.

- 10.2 The Contractor shall appoint a named individual as the Contractor's Authorised Representative who shall be responsible for the overall quality and timeliness of the Services to be provided.
- 10.3 An annual Framework Capability Review Meeting will be held between the Authority and the Contractor.
- 10.4 The Contractor may also be required to attend a Contract Performance Review Meeting in respect of any Call-Off Contracts awarded to the Contractor. These may be held monthly or quarterly as appropriate to the Service requirements. Details of the governance requirements will be specified at the point of Call-Off.
- 10.5 The Contractor shall be responsible for any travel and subsistence costs incurred because of attendance at any Review Meeting. Meetings may also be held by teleconference with the agreement of all parties.
- 10.6 The Contractor shall be appropriately represented in person at all Review Meetings by an appointed Contractor's Authorised Representative that will be authorised to make critical decisions.

Annex A. Key Performance Indicators

KPI	Lots	Description	Measure	KPI Target	Source(s)	Service Credit Rating
KPI 1 Service Delivery	All	The Provider delivers against the project milestones.	The Provider achieves the delivery dates for the project milestones as specified in the Order	98%	Customer's Contract Manager	2
KPI 2 Contract Management	All	The Provider is responsive during Service delivery	The Provider attends monthly/quarterly (as specified in the Order) Contract Performance Review Meetings and provides the Customer with regular (as specified in the Order) updates throughout the project.	98%	Customer's Contract Manager	1
KPI 3 Quality	All	The Provider's model outputs meet the Customer's quality assurance standards	The model outputs are in line with the AQUA book and the Code of Practice for Official Statistics	98%	Customer's Contract Manager	2
KPI 4 Contract Management	All	The Provider delivers projects within the agreed budget and inline with the agreed Framework Prices	The Provider's invoices match the agreed Framework Prices and the payment schedule specified in the Order	98%	Customer's Contract Manager	1

SCHEDULE 3 - PRICING

1. All prices are in £ Sterling (GBP), excluding VAT.
2. For Lot 1, the Contractor may apply either Day Rates or an Out of Hours Hourly Rate, as follows:

Lot 1 Animal Health Modelling Services			
Ref	Role	Day Rate (£)	Out of Hours Hourly Rate (£)
Role 1	Senior Modeller		
Role 2	Modeller		18
Role 3	Assistant Modeller		
Role 4	Administrator		

3. For Lot 2, the Contractor may apply a Day Rate, as follows:

Lot 2 Plant Health Modelling Services		
Ref	Role	Day Rate (£)
Role 1	Senior Modeller	
Role 2	Modeller	
Role 3	Assistant Modeller	
Role 4	Administrator	

4. The 'Day Rate' is the price charged for an eight hour working day excluding breaks. Day Rates may be chargeable as a whole or as a half day.
5. The 'Out of Hours Hourly Rate' is the price charged for one hour, within the hours of 20:01 – 05:59 Monday to Fridays and all day on Saturdays, Sundays and bank holidays. For the avoidance of doubt, out of hours payments on bank holidays shall be limited to official bank holidays in England and Wales.
6. Out of Hours Hourly Rates will only be payable in relation to Services called-off from Lot 1 and will not be paid in relation to non-emergency work.
7. The Contractor shall be entitled to propose a variation to the Day Rates and the Out of Hours Hourly Rates on an annual basis. Any agreed variations shall take effect on the next anniversary of the Framework Agreement start date. Any proposed variation to the rates should be submitted, in writing, together 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. Justification should include the reasons for requesting the variation, for example detailing an increase in costs for a specific area of Service. The Authority reserves the right to refuse a proposed variation if it considers that appropriate justification for the variation is not provided,

or if it exceeds the average rate of inflation as measured by the Consumer Price Index (CPI) over each complete month of the current financial year.

SCHEDULE 4 - CHANGE CONTROL

Contract Change Note

Contract Change Note Number	
Contract Reference Number & Title	
Variation Title	
Number of Pages	

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

IT IS AGREED as follows

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

Change Requestor / Originator		
Summary of Change		
Reason for Change		
Revised Price	Original Contract Value	£
	Previous Contract Changes	£
	Contract Change Note [x]	£
	New Contract Value	£
Revised Payment Schedule		
Revised Specification (See Annex [x] for Details)		
Revised Contract Period		
Change in Contract Manager(s)		
Other Changes		

2. Save as herein amended all other terms of the Original Contract shall remain effective.
3. This Change Control Notice shall take effect from the date on which both the Customer and the Contractor have communicated acceptance of its terms via Bravo.

SCHEDULE 5 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. This Schedule shall be completed by the Authority or, in respect of any Call-Off Contract, the Customer, who may take account of the view of the Contractor, however the final decision as to the content of this Schedule shall be with the Authority (or in respect of any Call-Off Contract the Customer), at its absolute discretion.
2. The contact details of the Authority Data Protection Officer are:

Defra Group Commercial

DGC.GDPR@defra.gov.uk
3. The contact details of the Contractor Data Protection Officer are:

[REDACTED]
4. If a Call-Off Contract involves Personal Data processing that differs from the instructions given in the table below, a Customer may include such specific instructions in an Order Form and such instructions shall apply in respect of that Call-Off Contract.
5. The Contractor shall comply with any further written instructions with respect to processing by the Customer. Any such further instructions shall be incorporated into this Schedule.

Data Processing descriptor	Narrative
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority and/or Customer is the Controller and the Contractor is the Processor in accordance with clause 18 of the Framework Agreement and clause E2.1 of the Call-Off Contract.
Subject matter of the processing	The Authority is the United Kingdom (UK) Government Department responsible for the environment, food and farming and rural affairs. The Authority's priorities are to

	<p>secure a healthy natural environment; a sustainable, low-carbon economy; a thriving farming sector and a sustainable, healthy and secure food supply.</p> <p>The Authority is committed to ensuring the UK remains a world-leading food and farming nation based on high standards of animal health and welfare. As a part of this, one of the Authority's key objectives is to ensure our country is well protected against natural threats and hazards. The Authority takes the lead on planning for and responding to incidents or occurrences (Outbreaks) of notifiable pests and diseases of animals (in England and Wales) and plants (in England).</p> <p>Quantitative modelling enhances the Authority's evidence base and provides additional specialist advice upon which policy decisions are taken. It also ensures that the Authority is better prepared to deal swiftly and efficiently with emergencies in its areas of responsibility.</p>
Duration of the processing	The Framework term: 01/03/2020 – 28/02/2023
Nature and purposes of the processing	<p>Nature: storage, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available</p> <p>Purpose: The main contribution of models to date has been towards the development and modification of disease prevention and control policy, proactively as well as in response to Outbreaks. In doing so, quantitative modelling informs policies that support the protection of public health, the environment and the economy from animal and plant pests and diseases which in turn enables a sustainable, secure and healthy food supply.</p>
Type of Personal Data	<p>The Framework is for the provision of Animal and Plant Health Modelling services. Under the framework, the Authority expects to facilitate the release of denominator data (the location of livestock premises and well as data on GB animal movements), required by the Contractor to inform their models. These datasets will include personal data including the unique identifier for farms (County Parish Holding numbers), geo-coordinates, and potentially addresses too.</p>

	<p>In an outbreak, the Authority is likely to be sharing this as well as more sensitive and detailed information related to the outbreak or incident, including laboratory results which will likely be accompanied by names and addresses.</p> <p>The necessary data sharing protocols and confidentiality agreements will need to put in place to enable the release of such data once specific details are known.</p>
Categories of Data Subject	Farmers, animal keepers, other private address owners/landowners (if location of a pest or plant disease)
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	In accordance with Clause E2.7.5 of the Schedule 1 - Call-Off Contract Terms and Conditions – “at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Call-Off Contract unless the Contractor is required by Law to retain the Personal Data”.

SCHEDULE 6 – CALL-OFF ORDER FORM

Customer	
Address	
Contact Ref:	Ref: Phone: E-mail:
Order Number	[To be quoted on all correspondence relating to this Order]
Order Date	

Contractor			
For attention of:	Name:	Phone:	E-mail:
Address			

1. REQUIREMENTS
(1.1) Services required including any key personnel:
(1.2) Commencement Date:
(1.3) End Date:
(1.4) Key Personnel of the Contractor
(1.5) Quality/Technical/Performance Standards
(1.6) Location(s) at which Services are to be provided:

2. PRICE AND PAYMENTS
<p>(2.1) The Price excluding VAT, payment profile and method of payment (e.g. Government Procurement Card (GPC) or BACS)) []/[Set out in schedule]</p> <p>[Guidance: Insert details of the Price, payment profile and method of payment. This should not be different from the rates set out in Schedule 3 to the Framework Agreement. Consider whether payments should be staged and linked to the achievement of particular milestones.]</p>
<p>(2.2) Invoicing and Payment</p> <p>The Contractor shall issue invoices [monthly]/[quarterly] in arrears.</p> <p>[Guidance: if known, specify any additional supporting information which the Contractor should provide with the invoice].</p>

3. Commercially Sensitive and Confidential Information

The following information shall be deemed Commercially Sensitive Information or Confidential Information:

[]

[Guidance: Include details of any Commercially Sensitive Information identified by the Contractor and the duration it should be confidential for. This will assist the Authority in respect of compliance with Freedom of Information Act and the section 45 Code published by the Department of Constitutional Affairs.]

4. Contractor and Third Party Software

CONTRACTOR SOFTWARE means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which comprises:

Software	Supplier (if Affiliate of the Contractor)	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?

THIRD PARTY SOFTWARE means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services and which comprises:

Software	Supplier	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?

5.LIABILITY
For the purposes of clause G1.3 of the Call-Off Terms and subject to the remainder of clause G 1 of the Call-Off Terms the Contractor's total liability shall not exceed [insert sum].
6.TERMINATION
For the purposes of clause H3.1 of the Call-Off Terms the Customer may terminate the Call-Off Contract on [xx] days' notice to the Contractor.
7.NOTICES
<p>Notices shall be sent to the addresses set out below for the purpose of service of notices under the Call-Off Contract:</p> <p>For the Customer:</p> <p>Contact Name:</p> <p>Address:</p> <p>Email:</p> <p>For the Contractor:</p> <p>Contact Name:</p> <p>Address:</p> <p>Email:</p>

BY SIGNING AND RETURNING THIS ORDER FORM THE CONTRACTOR AGREES to enter a legally binding contract with the Customer to provide to the Customer the Services specified in the Order Form, incorporating the Call-Off Terms set out in the framework agreement entered into by the Contractor and the Authority on **[insert date]**.

For and on behalf of the Contractor:

Signed _____

Name _____

Position _____

Date _____

For and on behalf of the Customer:

Signed _____

Name _____

Position _____

Date _____

FOR USE BY FINANCE TEAM ONLY	
Category:	VAT Code
Cost Centre Code:	Objective:
Account and Sub Account Code:	Project Code:
Requisition Raised By:	Requisition Number:
Purchase Order Number:	Receipt Number:

SCHEDULE 7 – SECURITY REQUIREMENTS

INTERPRETATION AND DEFINITION

For the purposes of this Schedule 7, unless the context otherwise requires the following provisions shall have the meanings given to them below:

“Breach of Security” means the occurrence of unauthorised access to or use of the Premises, the Premises, the Services, the Contractor System, or any ICT or data (including Customer Data) used by the Customer or the Contractor in connection with the Call-Off Contract.

“Contractor Equipment” means the hardware, computer and telecoms devices and equipment supplied by the Contractor or its Sub-Contractor (but not hired, leased or loaned from the Customer) for the provision of the Services;

“Contractor Software” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is specified as such in the Order Form.

“ICT” means Information Communications Technology and includes a diverse set of technological tools and resources used to communicate, and to create, disseminate, store and manage information, including computers, the Internet, broadcasting technologies (radio and television), and telephony.

“Protectively Marked” shall have the meaning as set out in the Security Policy Framework.

“Security Plan” means the Contractor’s security plan prepared pursuant to paragraph 3 an outline of which is set out in an Appendix to this Schedule 7.

“Software” means Specially Written Software, Contractor Software and Third Party Software.

“Specially Written Software” means any software created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of the Call-Off Contract.

“Third Party Software” means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services including the software and which is specified as such in the Order Form.

1. PRINCIPLES OF SECURITY

- 1.1 The Contractor acknowledges that the Customer places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Contractor System. The Contractor also acknowledges the confidentiality of Customer Data.
- 1.2 The Contractor shall be responsible for the security of the Contractor System and shall at all times provide a level of security which:
 - 1.2.1 is in accordance with Good Industry Practice and Law;

- 1.2.2 complies with Security Policy Framework; and
- 1.2.3 meets any specific security threats to the Contractor System.
- 1.3 Without limiting paragraph 1.2, the Contractor shall at all times ensure that the level of security employed in the provision of the Services is appropriate to maintain the following at acceptable risk levels (to be defined by the Customer):
 - 1.3.1 loss of integrity of Customer Data;
 - 1.3.2 loss of confidentiality of Customer Data;
 - 1.3.3 unauthorised access to, use of, or interference with Customer Data by any person or organisation;
 - 1.3.4 unauthorised access to network elements, buildings, the Premises, and tools used by the Contractor in the provision of the Services;
 - 1.3.5 use of the Contractor System or Services by any third party in order to gain unauthorised access to any computer resource or Customer Data; and
 - 1.3.6 loss of availability of Customer Data due to any failure or compromise of the Services.

2. SECURITY PLAN

- 2.1 The Contractor shall develop, implement and maintain a Security Plan to apply during the Contract Period (and after the end of the term as applicable) which will be approved by the Customer, tested, periodically updated and audited in accordance with this Schedule 7.
- 2.2 A draft Security Plan provided by the Contractor as part of its bid is set out herein.
- 2.3 Prior to the Commencement Date the Contractor will deliver to the Customer for approval the final Security Plan which will be based on the draft Security Plan set out herein.
- 2.4 If the Security Plan is approved by the Customer it will be adopted immediately. If the Security Plan is not approved by the Customer the Contractor shall amend it within 10 Working Days of a notice of non-approval from the Customer and re-submit to the Customer for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Customer. If the Customer does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause 12 (Dispute Resolution). No approval to be given by the Customer pursuant to this paragraph 3.4 may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 2.1 to 2.4 shall be deemed to be reasonable.
- 2.5 The Security Plan will set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:

- 2.5.1 the provisions of this Schedule 7;
 - 2.5.2 the provisions of the Services relating to security;
 - 2.5.3 the Information Assurance Standards;
 - 2.5.4 the data protection compliance guidance produced by the Customer;
 - 2.5.5 the minimum set of security measures and standards required where the system will be handling Protectively Marked or sensitive information, as determined by the Security Policy Framework;
 - 2.5.6 any other extant national information security requirements and guidance, as provided by the Customer's IT security officers; and
 - 2.5.7 appropriate ICT standards for technical countermeasures which are included in the Contractor System.
- 2.6 The references to Quality Standards, guidance and policies set out in this Schedule 7 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such Quality Standards, guidance and policies, from time to time.
- 2.7 If there is any inconsistency in the provisions of the above standards, guidance and policies, the Contractor should notify the Authorised Representative of such inconsistency immediately upon becoming aware of the same, and the Authorised Representative shall, as soon as practicable, advise the Contractor which provision the Contractor shall be required to comply with.
- 2.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001 or other equivalent policy or procedure, cross-referencing if necessary to other schedules of the Call-Off Contract which cover specific areas included within that standard.
- 2.9 The Security Plan shall not reference any other documents which are not either in the possession of the Customer or otherwise specified in this Schedule 7.

3. AMENDMENT AND REVISION

- 3.1 The Security Plan will be fully reviewed and updated by the Contractor annually or from time to time to reflect:
- 3.1.1 emerging changes in Good Industry Practice;
 - 3.1.2 any change or proposed change to the Contractor System, the Services and/or associated processes;
 - 3.1.3 any new perceived or changed threats to the Contractor System;
 - 3.1.4 changes to security policies introduced Government-wide or by the Customer; and/or

3.1.5 a reasonable request by the Customer.

3.2 The Contractor will provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Customer.

3.3 Any change or amendment which the Contractor proposes to make to the Security Plan (as a result of an Customer request or change to the Services or otherwise) shall be subject to a CCN and shall not be implemented until Approved.

4. AUDIT AND TESTING

4.1 The Contractor shall conduct tests of the processes and countermeasures contained in the Security Plan ("**Security Tests**") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Customer.

4.2 The Customer shall be entitled to send a representative to witness the conduct of the Security Tests. The Contractor shall provide the Customer with the results of such tests (in an Approved form) as soon as practicable after completion of each Security Test.

4.3 Without prejudice to any other right of audit or access granted to the Customer pursuant to the Call-Off Contract, the Customer shall be entitled at any time and without giving notice to the Contractor to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Contractor's compliance with and implementation of the Security Plan. The Customer may notify the Contractor of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Services.

4.4 Where any Security Test carried out pursuant to paragraphs 4.2 or 4.3 reveals any actual or potential security failure or weaknesses, the Contractor shall promptly notify the Customer of any changes to the Security Plan (and the implementation thereof) which the Contractor proposes to make in order to correct such failure or weakness. Subject to Approval in accordance with paragraph 3.3, the Contractor shall implement such changes to the Security Plan in accordance with the timetable agreed with the Customer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the Security Policy Framework or security requirements, the change to the Security Plan shall be at no additional cost to the Customer. For the purposes of this paragraph, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

5. BREACH OF SECURITY

5.1 Either Party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.

5.2 Upon becoming aware of any of the circumstances referred to in paragraph 5.1, the Contractor shall immediately take all reasonable steps necessary to:

- 5.2.1 remedy such breach or protect the Contractor System against any such potential or attempted breach or threat; and
 - 5.2.2 prevent an equivalent breach in the future.
- 5.3 Such steps shall include any action or changes reasonably required by the Customer. If such action is taken in response to a breach that is determined by the Customer acting reasonably not to be covered by the obligations of the Contractor under the Call-Off Contract, then the Contractor shall be entitled to refer the matter to the CCN procedure set out in Schedule 1.
- 5.4 The Contractor shall as soon as reasonably practicable provide to the Customer full details (using such reporting mechanism as may be specified by the Customer from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

APPENDIX 1- OUTLINE SECURITY PLAN

APPENDIX 2 - SECURITY POLICY: SECURITY POLICY FRAMEWORK

A copy of the Security Policy Framework may be found at:

<https://www.gov.uk/government/publications/security-policy-framework>