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**CONTRACT FOR THE PROVISION OF A FULLY MANAGED SERVICE FOR THE DELIVERY OF TUBERCULIN TESTING AND THE SUPPLY OF VETERINARY SERVICES TO GOVERNMENT IN ENGLAND AND WALES.**

**RM: 20162**

**January 2015**

## **SECTION 1**

### **FORM OF CONTRACT**

THIS CONTRACT is made on the [ ] day of [ ]

BETWEEN:

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

AND

(2) IECHYD DA (GWLEDIG) LTD a company limited by guarantee (registered in England and Wales under number 8821623) whose registered office is situated at Gorseland North Road, Aberystwyth, Ceredigion SY23 2WB ("the Supplier")

### **WHEREAS**

- a) Pursuant to its strategy for procuring high quality bovine TB testing, related veterinary services and emergency response services for England and Wales, the Authority conducted a competitive procurement (OJEU reference 2014/S133-238866) to appoint Suppliers to provide such services within seven (7) geographical lots covering England and Wales.
- b) Following a tendering process carried out in accordance with the open procedure, the Authority has appointed the Supplier to provide the Services in respect of Geographical Lot 2 and the Supplier hereby agrees to provide those Services in accordance with the terms set out below.

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

## **1. TERMS OF CONTRACT**

1.1 The Supplier shall provide the Authority with the Services in accordance with the terms and conditions of this Contract which shall comprise of all of the documents set out below in paragraph 1.2 (as the same may be supplemented or varied from time to time).

1.2 This Contract comprises of the following Sections and Schedules:

Section 1: Form of Contract

Section 2: General Conditions of Contract

Schedule 1: Specification Schedule

Schedule 2: Pricing Schedule

Schedule 3: Change Control

Schedule 4: Commercially Sensitive Information

Schedule 5: Performance Management Framework

Schedule 6: Contract Governance

Schedule 7: Exit Management

Schedule 8: Staff Transfer

Schedule 9: HMG Security Framework

Schedule 10: Geographical Lots

Schedule 11: OCQ(V) Modules

Schedule 12: Use of the APHA 'Sam' Computer System

Schedule 13: Supplier's Committed OV Workforce

Schedule 14: List of equipment to be supplied by the Supplier

Schedule 15: APHA Generic Risk Assessment – Working with Animals

Schedule 16: Travel & Subsistence

Schedule 17: APHA Procedural Instructions (May 2014)

Schedule 18: Suppliers Key Personnel, Contacts & Communications

Schedule 19: Suppliers H&S at Work Policy & Stated Commitments

Schedule 20: Guarantee

("the Contract Documents")

together with any additional documents referred to in the Contract Documents, which expressly or by necessary implication are intended to have contractual effect and (unless expressly indicated otherwise) any inconsistency in the Contract Documents shall be resolved by reference to the descending order of priority in which they are listed above.

1.3 The Contract shall take effect on the date of signing the Contract by both parties ("the Commencement Date") and prior to 1<sup>st</sup> April 2015 ("the Service Commencement Date") and shall expire automatically on 31<sup>st</sup> March 2018, (the "Initial Contract Period") unless it is terminated sooner in accordance with the provisions of this Contract or with the common law or statute.

1.4 The Initial Contract Period may be extended for one or more periods of up to 24 (twenty four) months pursuant to Clause F8 at the sole option and discretion of the Authority (the "Extension Period"). The provisions of the Contract will apply throughout any such Extended Period.

AS WITNESS whereof the hands of the duly authorised representatives of the Parties the day and year first herein written.

**SIGNED** for and on behalf of AUTHORITY

SIGNATURE.....

NAME.....

Position.....

**SIGNED** for and on behalf of SUPPLIER

SIGNATURE.....

NAME.....

Position.....

## **SECTION 2**

### **GENERAL TERMS AND CONDITIONS**

#### CONTENTS

#### A. GENERAL PROVISIONS

- A1 Definitions and Interpretation
- A2 Supplier's Obligations
- A3 Authority's Obligations
- A4 Supplier's Status
- A5 Initial Contract Period
- A6 Notices
- A7 Mistakes in Information
- A8 Conflicts of Interest

#### B. THE SERVICES

- B1 The Specification
- B2 Provision and Removal of Equipment
- B3 Manner of Carrying Out the Services
- B4 Key Personnel
- B5 Supplier's Staff
- B6 Not used
- B7 Property
- B8 Offers of Employment
- B9 Employment Provisions

C. PAYMENT AND CONTRACT PRICE

- C1 Contract Price
- C2 Payment and VAT
- C3 Recovery of Sums Due
- C4 Contract Price During Extension of the Initial Contract Period
- C5 Euro

D. STATUTORY OBLIGATIONS AND REGULATIONS AND OTHER REQUIREMENTS

- D1 Prevention of Corruption
- D2 Prevention of Fraud
- D3 Discrimination
- D4 The Contracts (Rights of Third Parties) Act 1999
- D5 Environmental Requirements
- D6 Health and Safety
- D7 Business Continuity and Disaster Recovery
- D8 Continuous Improvement
- D9 Best Practice Event
- D10 Supplier Step-In

E. PROTECTION OF INFORMATION

- E1 Authority Data
- 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

- E6 Publicity, Media and Official Enquiries
- E7 Security
- E8 Intellectual Property Rights
- E9 Audit

## F. CONTROL OF THE CONTRACT

- F1 Failure to meet requirements
- F2 Contract Governance and Monitoring
- F3 Remedies in the event of inadequate performance or failure to perform
- F4 Transfer and Sub-Contracting
- F5 Waiver
- F6 Change Control
- F7 Severability
- F8 Extension of Initial Contract Period
- F9 Remedies Cumulative
- F10 Entire Agreement
- F11 Counterparts
- F12 Performance Management Framework

## G. LIABILITIES

- G1 Liability, Indemnity and Insurance
- G2 Warranties and Representations

## H. DEFAULT, DISRUPTION, TERMINATION, RETENDERING AND HANDOVER

- H1 Termination on Insolvency and Change of Control

- H2 Termination on Default
- H3 Termination on Notice
- H4 Consequences of Expiry or Termination
- H5 Disruption
- H6 Recovery upon Termination
- H7 Authority Step-in
- H8 Force Majeure
- H9 Retendering and Handover
- H10 Exit Management
- H11 Knowledge Transfer

I. DISPUTES AND LAW

- I1 Governing Law and Jurisdiction
- I2 Dispute Resolution

## **A. GENERAL PROVISIONS**

### **A1 Definitions and Interpretation**

A1.1 In this Contract unless the context otherwise requires the following terms shall have the meanings given to them below:

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

“Agency Worker” has the meaning given in the Agency Workers Regulations 2011.

“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.

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

“Approval” means the written consent of the Authority.

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

“Authority” means the Secretary of State for Environment, Food and Rural Affairs of Nobel House, 17 Smith Square, London, SW1P 3JR.

“Authority Data” means

(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which includes data:

(i) supplied to the Supplier by or on behalf of the Authority;

(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract (including, but not limited to, the data which the Supplier is required to generate in respect of the provision of the Services and submit to the Authority via Sam); and

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

“Authority Software” means software which is owned by or licensed to the Authority, including software which is or will be used by the Supplier for the purposes of providing the Services but excluding the Supplier Software.

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

“Authority’s Premises” means any premises occupied by or under the control of the Authority where the Services are to be supplied, as set out in the Specification.

“BACS” means Bankers Automated Clearing System

“BCDR Event” any event which causes severe disruption to the normal delivery of the Services and which requires the Supplier to adopt alternative methods of delivering the Services for the duration of the event.

“BCDR Plan” a plan prepared pursuant to clause D8 (Business Continuity and Disaster), as may be amended from time to time;

“BPSS” (“Baseline Personnel Security Standard”) means the recognised standard for HMG for staff vetting which comprises verification of (1) identity, (2) employment history, (3) nationality and immigration status (including the right to work), and Criminal Records Bureau check (including a five (5) year address history check).

“Changes or Change Control” means any amendment of or change to the Contract.

“Change Control” means any amendment of or change to the Contract.

“Change Control Note” (“CCN”) means the agreed Schedule 3 annexed to the Contract containing details of agreed Changes to the Contract.

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

“Commercially Sensitive Information” means the information listed in the Commercially Sensitive Information Schedule comprised of information:

- (a) which is provided by the Supplier to the Authority in confidence for the period set out in that Schedule; and/or
- (b) that constitutes a trade secret.

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

- (a) was public knowledge at the time of disclosure (otherwise than by breach of clause E4 (Confidential Information));
- (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.

“Conflict of Interest” means an actual or potential conflict of interest on the part of the Tenderer in connection with the Contract.

“Consortium” means the consortium identified by the Supplier in its Tender;

“Consortium Tender” means a Tender which the Supplier has indicated (in the Tender) was submitted on behalf of a consortium;

“Continuous Improvement Plan” means the plan developed by the Supplier in accordance with clause D8;

“Continuous Improvement Proposals” means the continuous improvement proposals submitted by the Supplier as part of its Tender;

“Contract” means this written agreement between the Authority and the Supplier, which is more particularly described in clause 1.2 of the Form of Contract;

“Contract Year” means any period of one year during the Contract Period commencing on the Commencement Date (or any anniversary thereof) and concluding on the day before the next anniversary of the Commencement Date.

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

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

- (a) the date of expiry set out in clause A4 (Initial Contract Period), or
- (b) following an extension pursuant to clause F8 (Extension of Initial Contract Period), the date of expiry of the extended period,

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

“Contract Prices” means the prices (exclusive of any applicable VAT), payable to the Supplier by the Authority under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Supplier of its obligations under the Contract.

“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.

“County Parish Holding or (CPH)” means an area of land within a county and parish identified by a unique reference number which comprises nine digits, the first 2 digits relating to the county, the next 3 relating to the parish and the last 4 digits being a unique number to the Keeper e.g. 18/345/6789

“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.

“CTS” means the Cattle Tracing System

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

“DPA” means the Data Protection Act 1998 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.

“Employee Liabilities”

all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation

“Employment Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive.

“End-User” means the consumer of the Service

“Environmental Information Regulations (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.

“EOV” means Experienced Official Veterinarian

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

“EU” means European Union

“Expiry Date” means the date on which this Contract expires.

“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” any of the following acts, to the extent they are outside the reasonable control of either party: acts of God, riots, war or armed conflict, acts of terrorism, acts of local government or regulatory bodies, fire, flood, storm or earthquake, or natural disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier’s or a Sub-Contractor’s supply chain;

“Form of Contract” means the document comprising Section 1 of the Contract signed by or on behalf of the Parties confirming their willingness to enter into and be bound by the terms of the Contract.

“Fraud” means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

“FVO” means the Food and Veterinary Office of the European Commission.

“Geographical Lot” means the region within England that is associated with APHA region South East and which is contained within Schedule 10: Geographical Lots.

“GHG” means greenhouse gas

“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.

“Guarantee” means a parent company guarantee in the form annexed in Schedule 20.

“HMG” means Her Majesty’s Government

“HMG Security Policy Framework” means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division) as updated from time to time, a link to which is set out in Schedule 9.

“Holding” means an area of land where animals or livestock are located, kept or handled. Farms are Holdings, so are livestock markets, assembly centres and slaughterhouses. Most Keepers will have only one Holding. However, some Keepers may have more than one Holding and some Holdings may be used by more than one Keeper. A business is not a Holding. Many businesses may be made up of more than one Holding.

“ICT Environment” means the Authority System and the Supplier System.

“Incident” means a disease outbreak response initiated by a red or amber teleconference called by the relevant CVO in accordance with UK contingency plans for notifiable disease outbreaks or a similar event.

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

“Initial Contract Period” means the period from the Commencement Date to the date of expiry set out in clause A4 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

“Intellectual Property Rights” means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registerable 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 registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Invitation to Tender (ITT)” means the invitation to tender issued by the Authority in relation to the procurement of this Contract.

“IP Materials” has the meaning given to it in clause E8.1 (Intellectual Property Rights).

“Keeper” means a person responsible for animals or livestock which are tested as part of the Services.

“Keeper Data” means any Personal Data or other data (including commercially sensitive data) held by the Supplier in relation to any Keeper.

“Key Performance Indicators” or “KPIs” means the indicators set out in Schedule 5: Performance Management Framework.

“Key Personnel” means those persons named by the Supplier in B4 and Schedule 18: Suppliers Key Personnel, Contacts and Communications.

“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 any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Supplier is bound to comply and including any new Law enacted during the Contract Period.

“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 material breach of the Contract;

“Month” means calendar month.

“MRCVS” means Member or Fellow of the Royal College of Veterinary Surgeons.

“Network” means business group or system supply links

“Official Controls” means any form of control that the Authority or the European Community performs for the verification of compliance with feed and food law, animal health and animal welfare rules

“Other Geographical Lot” any of the other Lots for this procurement referred to in Schedule 10: Geographical Lots.

“Other Geographical Lot Suppliers” each of the other suppliers appointed to supply veterinary services in relation to the remaining six (6) geographic lots in England and Wales.

“Other Geographical Lot Contract” any contract entered into by the Authority in relation to one of the Other Geographical Lots.

“OV” means an Official Veterinarian (OV) which is the term used to describe a veterinary surgeon, that hold an OCQ(V) qualification and are

approved or authorised by APHA to perform work on behalf of an EU member state.

“OV Workforce” means the element of the Suppliers workforce who hold an OCQ(V) qualification and approved or authorised by APHA

“OCQ(V)” means Official Control Qualification (Veterinary)

“OCQ(V)-ES” means OCQ(V) Essential Skills

“OCQ(V)-SS” means OCQ(V) Statutory Surveillance

“OCQ(V)-TT” means OCQ(V) Tuberculin Testing

“Partner Body” means the Welsh Government

“Party” means a party to the Contract.

“Persistent Failure” means any two (2) or more failures by the Supplier in any period of twelve (12) months from Contract Commencement to comply with its obligations under the Contract;

“Premises” means any of the Authority’s Premises at which the Services are to be supplied (if applicable).

“Pricing Schedule” means Schedule 2 of the Contract.

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

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

“QA” means Quality Assurance

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

“RCVS” means the Royal College of Veterinary Surgeons

“Receipt” means the physical or electronic arrival of the invoice at the address of the Authority detailed at clause A5.4 (Notices) or at any other address given by the Authority to the Supplier for the submission of invoices.

“Regulations” means the Public Contracts Regulations 2006 (as amended)

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

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

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

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

“Returning Employees” means those persons listed in a schedule to be agreed by the Parties prior to the end of the Contract Period who it is agreed were employed by the Supplier (and/or any Sub-Contractor) wholly or mainly in the supply of the Services immediately before the end of the Contract Period.

“Sam” means the computer system that the Authority will use to commission and monitor the delivery of the Services, which is more particularly described in Schedule 12: Use of the APHA Sam Computer System.

“Schedule” means a schedule to Section 2: General Conditions of Contract attached to, and forming part of, the Contract.

“Service Commencement Date” means 1<sup>st</sup> April 2015.

“Service Credit Regime” means pre-specified financial amounts chargeable a service level is not achieved as described in Schedule 5: Performance Management Framework.

"Service Levels" means the service levels set out in Schedule 5: Performance Management Framework.

“Services” or “Contract Services” means the services to be supplied as specified in Schedule 1: Specification Schedule, namely “Services A-C” and including (for the avoidance of doubt) the Transition Services.

“SFP” means Single Farm Payment.

“Sites” any sites at which the Supplier provides the Services (other than the Premises (where applicable)).

“SME” means the category of micro, small and medium sized enterprises (SMEs) which are made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding 50 million euro, and/or an annual balance sheet total not exceeding 43 million euro. Within the SME category a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or balance sheet total does not exceed EUR 10 million. Within the SME category a micro enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or balance sheet total does not exceed EUR 2 million (See the definition contained in Commission Recommendation 2003/361/EC of 6th of May 2003 (published in OJ L124 p36) concerning the definition of micro, small and medium – sized enterprises.

“SOV” means Senior Official Veterinarian

“Special Conditions of Contract” means any additional conditions of contract agreed between the Parties.

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

“Specification Schedule” means Schedule 1 of this Agreement.

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

“Step-In Notice” has the meaning given in clause H7 (Authority Step-In).

- “Step-In Trigger Event” (a) any default by the Supplier giving rise to a right to terminate under clause H2;
- (b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
- (c) a Force Majeure Event that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
- (d) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement;

- (e) the existence of a serious risk to the health or safety of persons, to animal health, property or the environment in connection with the Services; and/or a need by the Authority to take action to discharge a statutory duty

“Step-Out Date” has the meaning given in Clause H7 (Authority Step-In)

“Step-Out Notice” has the meaning given in Clause H7 (Authority Step-In)

“Step-Out Plan” has the meaning given in Clause H7 (Authority Step-In)

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

“Suitably qualified” means to have a skill or required attribute necessary for an activity.

“Supplier” means the person, firm or company with whom the Authority enters into the Contract.

“Supplier Software” means software (if any) which is proprietary to the Supplier, including software which is or will be used by the Supplier for the purposes of providing the Services.

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

“Support Staff” means the element of the Suppliers workforce who do not hold an OCQ(V) qualification.

“Suspect animals” means animals, where there is suspicion of disease.

“TB Order” means legislative instruction – In England this relates to ‘Tuberculosis (England) Order 2007’ and in Wales this relates to the Bovine TB Order ‘The Tuberculosis (Wales) Order 2010’ and non-bovine Order “The Tuberculosis (Wales) Order 2011”.

“Tender” means the Supplier’s tender dated 9<sup>th</sup> September 2014 issued in response to the Invitation to Tender.

“Termination Assistance Period” means the period commencing:

- (a) where a notice of termination is served, on service of such notice; or
- (b) six (6) months prior to the Expiry Date

and ending one calendar month after the Termination Date or Expiry Date as the case may be;

“Termination Date” means the date on which this Contract terminates;

“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 Supplier for the purposes of providing the Services.

“Transition Period” means the period commencing on the Commencement Date and ending on the Services Commencement Date.

“Transition Services” means the Services to be provided during the Transition Period which are more particularly described in Schedule 1: Specification Schedule Section 22: Transition – Services A-C.

“TT1” means TB Skin Test day one (injection of avian and bovine tuberculin).

“TT2” means Tuberculin Skin Test day two (reading of test 72 (+/- four) hours later).

“UK” means United Kingdom.

“Valid Invoice” means an invoice containing the detailed information set out in clause C2 (Payment and VAT).

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

“Veterinary Inspectors” means those appointed under the Animal Health Act 1981 conferring statutory powers.

“VMD” means the Veterinary Medicines Directorate.

“Workforce” means all of the Suppliers resources, Support Staff, OV's, EOVS and SOV's

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

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;
- (e) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- (g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.
- (h) references in this Contract to the Authority shall be deemed to include APHA and vice versa.

## **A2 Supplier’s Obligations**

A2.1 The Supplier shall perform its obligations under this Contract, including in relation to the supply of the Services in accordance with:

- (a) all applicable Law;
- (b) the Specification;
- (c) Good Industry Practice;
- (d) the Quality Standards;

- (e) the Service Levels and Key Performance Indicators; and
- (f) otherwise in accordance with the Contract

A2.2 Where required by the Authority, the Supplier shall procure the execution of the Guarantee, by the Supplier's parent company, as a condition precedent to this Contract coming into force.

### **A3 Authority's Obligations**

A3.1 Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Authority to the Supplier.

### **A4 Supplier's Status**

A4.1 At all times during the Contract Period the Supplier shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

A4.2 The Supplier shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent or employee of the Authority.

### **A5 Initial Contract Period**

A5.1 The Contract shall take effect on the Commencement Date and shall expire automatically at midnight on the date set out in the Form of Contract, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under clause F8 (Extension of Initial Contract Period).

### **A6 Notices**

A6.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

A6.2 Any notice which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail (confirmed in

either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause A6.4. Provided the relevant notice is not returned as undelivered, the notice shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours after sending, in the case of electronic mail or facsimile transmission provided this was sent on a Working Day, or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

A6.3 Any other communication given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail. If the communication is made by letter such letters shall be addressed to the other Party in the manner referred to in clause A6.4. Provided the relevant communication is not returned as undelivered, the communication shall be deemed to have been made two (2) Working Days after the day on which the letter was posted, or four (4) hours after sending, in the case of electronic mail or facsimile transmission provided this was sent on a Working Day, or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

A6.4 For the purposes of clauses A6.2 and A6.3, the address of each Party shall be as stated in the Form of Contract, unless otherwise notified in accordance with clause A6.5.

A6.5 Either Party may change its address for service by serving a notice in accordance with this clause.

## **A7 Mistakes in Information**

A7.1 The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Supplier in connection with the Tender or the supply of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

## **A8 Conflicts of Interest**

A8.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of the Contract. The Supplier will notify the Authority without delay giving full particulars of any such conflict of interest which may arise.

A8.2 The Authority reserves the right to terminate the Contract immediately by notice in writing and/or to take or require the Supplier to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

## **B. THE SERVICES**

### **B1 The Specification**

B1.1 The Supplier shall deliver:

(a) the Transition Services with effect from the Commencement Date; and

(b) the Services with effect from the Service Commencement Date

in accordance with this Contract.

B1.2 In consideration of the Supplier supplying the Services during the Contract Period in accordance with the Authority's requirements as set out in the Specification and the provisions of the Contract the Supplier shall be paid the Contract Price.

B1.3 The Authority may inspect and examine the manner in which the Supplier supplies the Services at the Premises or the Sites (subject to the consent of the Keeper) during normal business hours on reasonable notice. The Supplier shall provide free of charge all such facilities as the Authority may reasonably require for such inspection and examination.

B1.4 Wherever reasonably requested to do so by the Authority, the Supplier shall co-ordinate his activities in supplying the Services with those of the Authority, the Other Geographical Lot Suppliers and any other contractors engaged by the Authority.

B1.5 Timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

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

B2.1 Unless otherwise provided in the Specification, the Supplier shall provide all the Equipment and resource necessary for the supply of the Services at no additional charge to the Authority.

- B2.2 All Equipment brought onto the Sites or (where applicable) the Premises shall be at the Supplier's own risk and the Authority shall have no liability for any loss of or damage to any Equipment. The Supplier shall provide for the haulage or carriage thereof to the Sites or the Premises and the removal of Equipment when no longer required at its sole cost.
- B2.3 Unless otherwise agreed, Equipment brought onto the Sites or the Premises will remain the property of the Supplier.
- B2.4 The Supplier shall maintain all items of Equipment used in the delivery of the Services in a safe, serviceable and clean condition.
- B2.5 The Supplier shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- (a) remove immediately from the Sites or (where applicable) the Premises any Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with the Contract; and
  - (b) replace such item with a suitable substitute item of Equipment.
- B2.6 On completion of the Services the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Sites or (where applicable) the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to those Sites or Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any Staff.

### **B3 Manner of Carrying Out the Services**

- B3.1 The Supplier 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 Services has not been specified in the Contract, the Supplier shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Supplier shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- B3.2 The Supplier shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services. The Supplier shall ensure that those Staff are properly managed and supervised.

### **B4 Key Personnel**

- B4.1 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.
- B4.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- B4.3 Any replacements to the Key Personnel shall be subject to the agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- B4.4 The Authority 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 Supplier to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.
- B4.5 The Authority may, by written notice to the Supplier, ask the Supplier to remove any Key Personnel whose continued presence would, in the reasonable opinion of the Authority, be undesirable. The Supplier shall comply with any such request immediately.
- B4.6 For the provision of the Services under this Contract, the Key Personnel are:

[REDACTED]

## **B5 Supplier's Staff**

- B5.1 The Authority may, by written notice to the Supplier, refuse to admit into, or withdraw permission to remain involved in the provision of the Services:
- (a) any member of the Staff; or
  - (b) any person employed or engaged by any member of the Staff,
- whose admission or continued involvement in the provision of the Services would, in the reasonable opinion of the Authority, be undesirable.
- B5.2 The Supplier shall complete Schedule 18: Suppliers Key Personnel, Contacts and Communications providing a list of the names and addresses of all persons who will be involved in the delivery of the Services specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

**B6 Not used**

**B7 Offers of Employment**

B7.1 Except in respect of any transfer of Staff under the Employment Regulations, for the duration of the Contract and for a period of twelve (12) Months thereafter the Supplier shall not employ or offer employment to any of the Authority's staff who have been associated with the procurement and/or the contract management of the Services without prior Approval.

**B8 Employment Provisions**

B8.1 The provisions of Schedule 8 (Staff Transfer) shall apply to this Contract.

**C PAYMENT AND CONTRACT PRICES**

**C1 Contract Prices**

C1.1 In consideration of the Supplier's performance of its obligations under the Contract, the Authority shall pay the Contract Prices in accordance with clause C2 (Payment and VAT).

C1.2 The Authority shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

**C2 Payment and VAT**

C2.1 The Supplier shall submit a Valid Invoice to the Authority at the periods specified by the Authority in the Specification. A Valid Invoice must contain the reference number of the relevant Purchase Order and otherwise comply with clauses C2.4 and C2.7.

C2.2 The Supplier shall add VAT to the Contract Price at the prevailing rate as applicable. The Supplier shall show the amount of VAT payable separately on all invoices as an extra charge. Where the Supplier fails to show VAT on any invoice, the Authority will not, at any later date, be liable to pay the Supplier any additional VAT.

C2.3 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing. The Authority shall provide the Supplier with a Purchase Order number and the Supplier shall include that number on every invoice submitted. Invoices without a valid Purchase Order number will be rejected.

- C2.4 Valid Invoices submitted in accordance with clause C2.1 above shall (unless otherwise instructed by the Authority):
- (a) be generated using the unamended task/test submission data provided by the Sam System;
  - (b) be checked and signed by Supplier's Representative as being accurate, complete and meeting the requirements of clauses C2.1, C2.4 and C2.7);
  - (c) be accompanied with support documentation listing the commissioned work completed by the Sam system and a 'Work Schedule activity' unique identifier; and
  - (d) documentation should be in Excel or similar format as may be required by the Authority to allow ease of checking.
- C2.5 Any Supplier time spent on meal or rest breaks shall not be chargeable to or payable by the Authority. Supplier supervisors must ensure that all workers take adequate meal or rest breaks.
- C2.6 No overhead costs of the Supplier shall be chargeable to or payable by the Authority unless specifically agreed in writing by the Authorised Authority Representative 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.
- C2.7 In submitting any Valid Invoice for payment, the Supplier, if registered for VAT, shall produce valid VAT invoices and the Authority shall have no obligation to pay any claimed sums which are not supported by a VAT invoice from the Supplier. Only the Supplier's Valid Invoices may be submitted for payment, no invoices from any other party will be payable by the Authority. Where different rates of VAT apply to the Services then the Supplier shall submit a separate invoice in respect of each of the Services which attract different VAT rates.
- C2.8 Expenses (where permitted in the Schedule 1: Specification Schedule) may only be claimed by the Supplier where these are clearly identified, supported by original receipts and agreed in advance by the Authorised Authority Representative in writing.
- C2.9 Where the Authority, at its sole discretion, makes any payment to the Supplier prior to the submission of a Valid Invoice (whether an interim payment or any other payment whatsoever) then this payment shall be on account of and deductible from the next payment to be made. If any overpayment has been made or the payment or any part is not supported by a Valid Invoice or timesheet in accordance with the requirements of this Contract then the Authority shall be entitled to recover this payment against future invoices raised or directly from the Supplier. All payments made by the Authority to a Supplier shall be on an interim basis pending

final resolution of an account with a Supplier in accordance with the terms of this clause C2.

- C2.10 The Authority shall pay all sums due to the Supplier within 10 Working Days of Receipt and matching of a Valid Invoice, to be submitted in arrears. Valid Invoices should be submitted for payment to the following address [ssd.apdefra@defra.gsi.gov.uk](mailto:ssd.apdefra@defra.gsi.gov.uk) or Accounts Payable Team, Shared Services Directorate (SSD), Room 109, Lion House, Willowburn Trading Estate, Alnwick, Northumberland, NE66 2PF.
- C2.11 Any late payment of undisputed Valid Invoices by the Authority will be subject to interest at the rate of a maximum of three (3) % above the base rate from time to time of Barclays Bank plc.
- C2.13 Where the Supplier enters into a Sub-Contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a Sub-Contract which requires payment to be made of all sums due by the Supplier to the Sub-Contractor within a specified period not exceeding ten (10) Working Days from the receipt of a Valid Invoice.
- C2.14 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this clause C2.15 shall be paid by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
- C2.15 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Contract under clause H2.3 (Termination on Default) for failure to pay undisputed sums of money.

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

- C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier to the Authority (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Contract), the Authority may (in its discretion) unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier from the Authority under the Contract or under any other agreement or contract with the Authority or the Crown.
- C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Supplier shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or

otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

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

#### **C4 Contract Price During Extension of the Initial Contract Period**

C4.1 Subject to the Schedule 2: Pricing Schedule and clause F6 (Change Control), the Contract Price shall apply without increase for the Initial Contract Period.

C4.2 Where the Contract is extended beyond the Initial Contract Period, the Contract Prices shall be revised on and from each subsequent CPIX Review Date.

C4.3 A Contract Price review shall be carried out by reference to the change in CPIX, using the following formula:

Revised Contract Prices = Current Contract Prices x (CPIX.2/CPIX.1)

Where:

“CPIX” means the Consumer Prices Index or such similar index as may be published by the Office of National Statistics from time to time.

“CPIX.1” is the index value of CPIX for the month fourteen months before the relevant CPIX Review Date.

“CPIX.2” is the index value of CPIX for the month two months before the relevant CPIX Review Date

“CPIX Review Date” means the third or fourth anniversary of the Commencement Date (as the case may be).

“Current Contract Prices” means the current level of the Contract Prices following any price review.

C4.4 Following a price review in accordance with clause C4.3 the Revised Contract Prices, shall take effect as the Contract Prices.

C4.5 Notwithstanding any price review carried out in accordance with clauses C4.1 to C4.4, the Contract Prices may also be reviewed following a Contract Prices benchmarking exercise carried out in accordance with clause D8.

#### **C5 Euro**

- C5.1 Any requirement of Law to account for the Services in Euro (or to prepare for such accounting), instead of and/or in addition to sterling, shall be implemented by the Supplier free of charge to the Authority.
- C5.2 The Authority shall provide all reasonable assistance to facilitate compliance with clause C5.1 by the Supplier.

**D. STATUTORY OBLIGATIONS AND REGULATIONS AND OTHER REQUIREMENTS**

**D1 Prevention of Corruption**

- D1.1 The Supplier shall not offer or give, or agree to give, to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Authority or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
- D1.2 The Supplier warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with the Contract.
- D1.3 If the Supplier, its Staff or anyone acting on the Supplier's behalf, engages in conduct prohibited by clauses D1.1 or D1.2, the Authority may:
- (a) terminate the Contract and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; and
  - (b) recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of those clauses.

**D2 Prevention of Fraud**

- D2.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Supplier (including its shareholders, members, directors) in connection with the receipt of monies from the Authority.

D2.2 The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

D2.3 If the Supplier or its Staff commits Fraud in relation to this or any other contract with the Crown (including the Authority) the Authority may:

(a) terminate the Contract and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; and

(b) recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of this clause.

### **D3 Discrimination**

D3.1 The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

D3.2 The Supplier shall take all reasonable steps to secure the observance of clause D3.1 by all Staff.

D3.3 The Supplier shall notify the Authority immediately in writing as soon as it becomes aware of any legal proceedings threatened or issued against it by its Staff on the grounds of discrimination arising in connection with the provision of the Services under this Contract.

### **D4 The Contracts (Rights of Third Parties) Act 1999**

D4.1 A person who is not a Party to the Contract 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 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.

### **D5 Environmental Requirements**

D5.1 The Supplier shall in the performance of the Contract have due regard to the Authority's Environmental, Sustainable Procurement and Ethical Procurement policy statements and in addition, shall assist the Authority in achieving the Sustainable Development in Government targets

("SDIG"). These statements and targets require the Authority through its procurement and management of suppliers to inter alia:

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

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

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

unless given written permission by the Authority to do so.

D5.3 In accordance with the Authority's commitments under SDIG, the Supplier shall where relevant to its delivery of the Services under this Contract assist the Authority in achieving its departmental sustainable operations targets by: conserving energy and water; reducing carbon emissions and other greenhouse gases; minimising the use of substances damaging or hazardous to health and the environment; reducing waste by, for

example, using resources more efficiently and reusing, recycling and composting; and respecting biodiversity.

- D5.4 The Authority is required to report to Ministers, the Office of Government Commerce and others on the progress that it is making in delivering Government policies through procurement and in meeting targets for SDIG and sustainable procurement. Where required by the Authority in writing, the Supplier shall provide the Authority with the information requested in order to enable the Authority to comply with those reporting requirements within ten (10) Working Days of such request being made.
- D5.5 The Supplier shall ensure that its Staff assigned to the Contract are aware of the Authority's sustainability objectives and how this Contract will facilitate the achievement of those objectives.
- D5.6 The Supplier shall comply with the minimum environmental mandatory standards in the "Government Buying Standards" and in addition where required by the Authority, comply with any relevant "Best Practice" and "Class Leader" standards in relation to any goods on that list which are supplied to the Authority by or on behalf of the Supplier under this Contract.

## **D6 Health and Safety**

- D6.1 The Supplier shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Authority shall promptly notify the Supplier of any health and safety hazards which may exist or arise in connection with the delivery of the Services and which may affect the Supplier in the performance of its obligations under the Contract.
- D6.2 While on the Authority's Premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there.
- D6.3 The Supplier shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract where that incident causes any personal injury or damage to property which could give rise to personal injury.
- D6.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Authority's Premises in the performance of its obligations under the Contract.
- D6.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

D6.6 The Supplier shall adhere to their Health and Safety at Work policy and Stated Commitments as contained within Schedule 19.

## **D7 Business Continuity and Disaster Recovery**

D7.1 During the Transition Period, the Supplier shall work with the Authority (at no additional cost to the Authority) to develop a BCDR Plan which will:

- (a) make provision for the continued delivery of the Services on the occurrence of a BCDR Event;
- (b) be consistent with the approach taken to business continuity and disaster recovery by the Authority and the Other Geographical Lot Suppliers.

D7.2 From time to time the Authority, may by notice in writing require the Supplier to review and/or test the BCDR Plan (at no additional cost to the Authority).

D7.3 On the occurrence of a BCDR Event, the Supplier undertakes to invoke the BCDR Plan and to continue to provide the Services (as far as possible) in accordance with the BCDR Plan.

## **D8 Continuous Improvement**

D8.1 During the Transition Period the Supplier shall, as part of the Transition Services, develop a Continuous Improvement Plan, to be agreed by the Authority.

D8.2 Within twenty one (21) Days of the Commencement Date, the Supplier shall submit a Continuous Improvement Plan to the Authority for consideration. The Continuous Improvement Plan will be a fully developed plan based on the tender proposals made by the Supplier in connection with Continuous Improvement in the Supplier's Tender.

D8.3 Within fourteen (14) Days of receiving the Continuous Improvement Plan, the Authority shall notify the Supplier in writing whether or not it accepts the Continuous Improvement Plan and if not, the Authority shall indicate what changes are required for an acceptable Continuous Improvement Plan.

D8.4 If the Authority:

- (a) accepts the Continuous Improvement Plan; or
- (b) fails to respond in accordance with clause D8.3

the Continuous Improvement Plan shall take effect accordingly.

D8.5 If the Authority rejects the Continuous Improvement Plan, the Supplier shall (within a further fourteen (14) days of receiving notice in writing of

such rejection) provide a revised draft plan, which the Authority shall again review and clauses D8.3 and D8.4 shall apply to such further consideration accordingly.

- D8.6 If the Supplier fails to submit a draft Continuous Improvement Plan which is acceptable to the Authority within three (3) months of the Commencement Date, the Authority shall be entitled to terminate the Contract, by notice in writing to that effect.
- D8.7 Once agreed, the Supplier shall comply with and provide the Services in accordance with the Continuous Improvement Plan.
- D8.8 Where, the Supplier identifies any potential areas of cost savings, that can be achieved, the Supplier will be contractually bound to deliver those cost savings, in accordance with this clause D8.
- D8.9 The Supplier shall have an ongoing obligation throughout the Contract Period to identify new and potential improvements to and/or efficiencies in the delivery of the Services which shall include, but are not limited to:
- (a) new and evolving relevant technologies which could improve the Services;
  - (b) new or potential improvements which enhance the quality, responsiveness, procedures, methods and customer support services;
  - (c) changes in business processes and ways of working that would enable the Services to be delivered at lower costs and /or at greater benefits to the Authority.
- D8.10 At each quarterly Review Meeting the Supplier shall notify the Authority in writing of any actual cost and/or efficiency savings that could be achieved.
- D8.11 Within three (3) months of the third and fourth anniversaries of the Commencement Date, the Authority, on serving notice in writing on the Supplier, shall have a right to carry out a benchmarking exercise whereby the Contract Prices will be benchmarked against the prices for services similar to the Services in the market. The benchmarking exercise shall be carried out by an independent firm appointed by agreement between the parties. The costs of appointing an independent firm to carry out the benchmarking exercise shall be borne by the Supplier. Each party shall bear their own costs of participating in such an exercise
- D8.12 Where the benchmarking exercise identifies that any of the Contract Prices is more than 10% greater than the price for an equivalent service

available in the market, the Authority shall be entitled to a price reduction in respect of the relevant Contract Prices in accordance with clause C4.

D8.13 The Supplier shall identify and report on its progress in relation to its obligations under this clause D8 and any proposed improvements to or efficiencies in the delivery of the Services that are capable of being delivered at each quarterly Review Meeting. If the Authority wishes to incorporate any improvement, efficiency changes will be made as a Contract Change.

## **D9 "Best Practice Event"**

D9.1 The Supplier undertakes (at no additional cost to the Authority) to provide reasonable assistance to the Authority in benchmarking the Services against the services provided by the Other Geographical Lot Suppliers.

D9.2 Without limiting clause D9.1, the Supplier agrees to participate in an annual "best practice" benchmarking event to be attended by the Authority and the Other Geographical Lot Suppliers.

## **D10. Supplier Step In**

D10.1. In the event that the Authority is required to terminate any of the Other Geographical Lot Contracts due to supplier default, insolvency or any other reason which necessitates the appointment of an alternative supplier on an urgent basis, the Authority may (in its discretion) seek to appoint a replacement supplier from amongst the remaining Other Geographical Lot suppliers and the Supplier.

D10.2 If clause D10.1 applies the Authority shall carry out a mini-competition between the Supplier and the remaining Other Geographical Lot Suppliers, in which case, the Authority shall notify the Supplier in writing that it is acting pursuant to clause D10.1 and that it wishes the Supplier to supply a bid in response to an invitation to bid to provide services in relation to relevant Other Geographical Lot.

D10.3 The Supplier shall give due consideration to whether or not it wishes to compete in such a mini-competition.

## **E PROTECTION OF INFORMATION**

### **E1 Authority Data**

E1.1 For the purposes of clauses E1 and 2, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meanings prescribed under the DPA.

- E1.2 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E1.3 The Supplier shall not and shall procure that any Sub-Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- E1.4 To the extent that Authority Data is held and/or Processed by the Supplier, the Supplier shall and shall procure that any Sub-Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format specified in the Specification.
- E1.5 The Supplier shall and shall procure that any Sub-Contractor shall take appropriate technological and organisational measures for preserving the security and integrity of Authority Data and preventing the corruption or loss of Authority Data (including measures to ensure that any Authority Data held within the Supplier's premises (in any form) is kept secure from theft by persons gaining unauthorised access).
- E1.6 The Supplier shall and shall procure that any Sub-Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored securely off-site. The Supplier shall ensure that such back-ups are made available to the Authority immediately upon request.
- E1.7 The Supplier shall and shall procure that any Sub-Contractor shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the HMG Security Policy Framework.
- E1.8 If the Authority Data is corrupted, lost or sufficiently degraded as a result of any Default on the part of the Supplier or any Sub-Contractor so as to be unusable, the Authority may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data and the Supplier shall do so promptly; and/or
  - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so.
- E1.9 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.

E1.10 To the extent that any Keeper Data comprises Personal Data, the Supplier shall comply with clause E2. All other Keeper Data shall be treated as Authority Data and this clause E1 shall apply accordingly.

## **E2 Data Protection Act Compliance**

E2.1 The Supplier shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.

E2.2 Notwithstanding the general obligation in clause E2.1, where the Supplier is Processing Personal Data as a Data Processor for the Authority the Supplier shall and shall procure that any Sub-Contractor shall:

- (a) Process the Personnel Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Authority;
- (b) comply with all applicable Laws;
- (c) process the Personal Data only to the extent and in such manner as is necessary for the provision of the Supplier's obligations under this Contract or as is required by Law or any Regulatory Body;
- (d) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- (e) take reasonable steps to ensure the reliability of its Staff who may have access to the Personal Data;
- (f) not transfer the Personal Data to any Sub-Contractor and/or Affiliates for the provision of the Services without prior Approval;
- (g) not cause or permit the Personal Data to be transferred outside of the European Economic Area without prior Approval;

- (h) ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause E2;
- (i) ensure that none of the Staff publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Authority;
- (j) not disclose Personnel Data to any third parties in any circumstances other than with Approval or in compliance with a legal obligation imposed upon the Authority;
- (k) notify the Authority (within five (5) Working Days) if it receives:
  - (i) a request from a Data Subject to have access to that person's Personal Data; or
  - (ii) a complaint or request relating to the Authority's obligations under the DPA;
- (l) provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
  - (i) providing the Authority with full details of the complaint or request;
  - (ii) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Authority's instructions;
  - (iii) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
  - (iv) providing the Authority with any information requested by the Authority;
- (m) permit the Authority (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause E9 (Audit), the Supplier's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Supplier is in full compliance with its obligations under this Contract;

- (n) provide a written description of the technical and organisational methods employed by the Supplier for Processing Personal Data (within the timescales required by the Authority); and

E2.3 The Supplier shall comply at all times with the DPA and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its applicable obligations under the DPA.

E2.4 The provisions of this clause E2 shall apply during the Contract Period and indefinitely after its expiry.

E.2.5 Where any Personal Data is Processed by any Sub-Contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-Contractor shall comply with the relevant obligations set out in this Contract as if such Sub-Contractor were the Supplier in particular in respect of:

- (a) data protection requirements set out in Clauses E1 (*Authority Data*) and E2 (Data Protection Act compliance);
- (b) FOIA requirements set out in E5 (*Freedom of Information*);

### **E3 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989**

E3.1 The Supplier shall comply with, and shall ensure that its Staff comply with, the provisions of:

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

E3.2 In the event that the Supplier or its Staff fail to comply with this clause, the Authority reserves the right to terminate the Contract by giving notice in writing to the Supplier.

### **E4 Confidential Information**

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

- E4.2 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, the Authority shall treat all Confidential Information belonging to the Supplier as confidential and shall not disclose any Confidential Information belonging to the Supplier to any other person without the prior written consent of the Supplier, except to such persons and to such extent as may be necessary for the performance of the Authority's obligations under the Contract.
- E4.3 The Supplier hereby gives its consent for the Authority to publish the Contract in its entirety (but with any information which is Confidential Information belonging to the Authority redacted), including from time to time agreed changes to the Contract, to the general public.
- E4.4 Where required by the Authority, the Supplier shall ensure that Staff, professional advisors and consultants sign a non disclosure agreement prior to commencing any work in connection with the Contract in such form as may reasonably be required by the Authority. The Supplier shall maintain a list of the non-disclosure agreements completed in accordance with this clause E4.4. Where requested by the Authority, the Supplier shall provide the Authority with a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Supplier shall ensure that its Staff, professional advisors and consultants are aware of the Supplier's confidentiality obligations under the Contract.
- E4.5 The Supplier may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- E4.6 The Supplier shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- E4.7 Clauses E4.1 and E4.2 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 Environmental Information Regulations;
  - (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 this Contract; or

- (e) it is independently developed without access to the other Party's Confidential Information.

E4.8 Nothing in clauses E4.1 and E4.2 shall prevent the Authority disclosing any Confidential Information obtained from the Supplier:

- (a) for the purpose of the examination and certification of the Authority's accounts; or
- (b) for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
- (c) to any government department or any other Contracting Authority and the Supplier 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; or
- (d) to any consultant, contractor or other person engaged by the Authority,

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

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

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

E4.11 In the event that the Supplier fails to comply with clauses E4.1 to E4.6, the Authority reserves the right to terminate the Contract with immediate effect by notice in writing.

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

under the Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.

- E4.13 The Supplier will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services under the Contract and will keep a record of such breaches. The Supplier will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Supplier's obligations under clauses E4.1 to E4.6. The Supplier will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- E4.14 The Supplier shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Supplier has failed to comply with clause E4.12.

## **E5 Freedom of Information**

- E5.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- E5.2 The Supplier shall (and shall procure that any Sub-Contractor shall) transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information:
- (a) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
  - (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA and/or regulation 5 of the Environmental Information Regulations.
- E5.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Information Regulations.
- E5.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.

E5.5 The Supplier acknowledges that (notwithstanding the provisions of clause E4 (Confidential Information)) the Authority may be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Supplier or the Services in certain circumstances:

- (a) without consulting the Supplier; or
- (b) following consultation with the Supplier and having taken its views into account;

provided always that where clause E5.5(a) applies the Authority shall, in accordance with any recommendations of the Codes of Practice under the FOIA or the Environmental Information Regulations, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

E5.6 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

E5.7 The Supplier acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Authority may be obliged to disclose it in accordance with this clause E5.

E5.8 The Authority shall not be liable for any loss, damage, harm or other detriment suffered by the Supplier arising from the disclosure of any Information falling within the scope of the FOIA and/or the Environmental Information Regulations.

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

E6.1 Without prejudice to the Authority's obligations under the FOIA, the Environmental Information Regulations or any obligations under the Public Contracts Regulations 2006 (as amended), or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

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

## **E7 Security**

E7.1 The Supplier shall, as an enduring obligation throughout the Contract, 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.

E7.2 Notwithstanding Condition E7.1, 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 Authority Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency.

E7.3 Any cost arising out of the actions of the Parties taken in compliance with clause E7.1 shall be borne by the Parties as follows:

- (a) by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Supplier); and
- (b) by the Authority if the Malicious Software originates from the Authority Software or the Authority Data (whilst the Authority Data was under the control of the Authority).

## **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 Supplier by or on behalf of the Authority;
- (b) prepared by or for the Supplier on behalf of the Authority for use, or intended use, in relation to the performance by the Supplier of its obligations under the Contract; or
- (c) the result of any work done by the Supplier, the Staff or any Sub-Contractor in relation to the provision of the Services (together with (a) and (b) above, the "**IP Materials**"),

shall vest in the Authority and the Supplier shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without prior Approval save to the extent necessary for performance by the Supplier of its obligations under the Contract.

E8.2 The Supplier hereby assigns to the Authority, 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 Contract or (in the case of rights arising after the date of the Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual

Property Rights produced by the Supplier. The Supplier shall execute all documentation and do all acts as are necessary to execute this assignment.

- E8.3 The Supplier 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 Contract or the performance of its obligations under the Contract.
- E8.4 The Supplier shall ensure that the third party owner (including any Sub-Contractor) of any Intellectual Property Rights which may be used to perform the Contract grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Supplier or to any other third party supplying services to the Authority.
- E8.5 The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Supplier shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority 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 Authority; or
  - (b) the use of data supplied by the Authority which is not required to be verified by the Supplier under any provision of the Contract.
- E8.6 The Authority shall notify the Supplier in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Supplier to the Authority.
- E8.7 The Supplier grants to the Authority a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Supplier owned or developed prior to the Commencement Date and which the Authority reasonably requires in order to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).

## **Audit**

- E9.1 The Supplier shall keep and maintain until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the

Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, all payments made by the Authority, and all payments made to Sub Contractors. As used in this clause “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data or in any other form. The Supplier shall on request afford the Authority or the Authority’s representatives such access to those records and processes as may reasonably be requested by the Authority in connection with the Contract subject to clause E9.5 below.

- E9.2 The Supplier shall grant duly authorised representatives of the Authority, the National Audit Office, the Welsh Government, the Food and Veterinary Office of the European Commission and the European Court of Auditors to the right to examine and audit all of the Supplier’s records and documents relating to the performance of this Contract, and the Suppliers sub-contracts. The Supplier agrees to provide such copies and oral or written explanations of its records as may reasonably be required by the Authority, its duly authorised representatives and/or the National Audit Office.
- E9.3 The Supplier agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Supplier relating solely and directly to the Services.
- E9.4 The Supplier (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on not less than ten business days’ notice to all such records (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Supplier shall provide such explanations as are reasonably required for these purposes.
- E9.5 The provisions of this clause E9 shall be subject at all times to the Supplier’s reasonable obligations of confidentiality towards its clients, employees and third parties and the following restrictions;
- E9.6 Except where an audit is imposed on the Authority by a regulatory body: (i) an audit under this clause shall not be carried out more than once in any contract year and for a period of 6 years following the expiry of this Contract; and ii) each party shall bear their own costs.
- E9.7 The Supplier agrees that it will impose contractual obligations in its contracts with Sub Contractors which contain the wording found in clauses E9.1 to E9.6 above with the express identification of the Authority as being a reference to the Secretary of State for Environment, Food and Rural Affairs. The purpose of these back to back clauses are so as to

ensure that the Authority has same rights to audit the records of the Supplier's Sub Contractors as it has to audit records of the Supplier under clauses E9.1 to E9.6.

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

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

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

### **F2 Contract Governance and Monitoring**

F2.1 The Parties shall comply with the provisions of Schedule 6: Contract Governance, in relation to the management and governance of this Contract.

F2.2 The Supplier shall immediately inform the Authority if any aspect of the Contract is not being or is unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.

F2.3 The Authority shall be entitled, on giving notice in writing to the Supplier, to hold:

- (a) monthly review meetings; and/or
- (b) quarterly review meetings; and/or
- (c) an annual review meeting

(collectively "Review Meetings")

and the Supplier shall ensure that the Review Meetings are attended by the required level of Supplier representatives, in accordance with Schedule 6: Contract Governance and that any reporting material required in accordance with clause F2.3 (or otherwise) is provided in advance of any such meeting.

F2.4 The Authority may in respect of the period under review for any of the meetings referred to in clause F2.2, consider such items as (but not limited to): the Supplier's performance in respect of the Services supplied under the Contract (including performance against KPIs); the Supplier's

contribution to innovation within the Authority; whether the Services provide the Authority with best value for money; consideration of any changes which may need to be made to the Services; and any other requirements set out in Schedule1: Specification Schedule.

F2.5 The Supplier shall provide at its own cost any assistance reasonably required by the Authority to carry out any of the Review Meetings including the provision of data and information.

F2.6 The Authority may (at its absolute discretion) produce a report (a "**Review Report**") of the results of any Review Meeting stating any areas of exceptional performance and areas for improvement in the provision of the Services and where there is any shortfall in any aspect of performance reviewed as against the Authority's expectations and the Supplier's obligations under this Contract.

F2.7 The Authority shall provide the Supplier with a copy of the Review Report (if applicable) for any comments the Supplier may have. The Authority shall consider such comments and at its absolute discretion produce a revised Review Report.

F2.8 The Supplier shall, within ten (10) Working Days of receipt of the Review Report (revised as appropriate) provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified by the Review Report.

F2.9 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Supplier's failure to meet its obligations under this Contract identified by the Review Report, or those which result from the Supplier's failure to meet the Authority's expectations notified to the Supplier or of which the Supplier ought reasonably to have been aware) shall be implemented at no extra charge to the Authority.

### **F3 Remedies in the event of inadequate performance or failure to perform**

F3.1 Without prejudice to any other remedy available to the Authority under the Contract, where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Supplier's obligations under the Contract, then the Authority shall notify the Supplier, and where considered appropriate by the Authority, investigate the complaint. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance with clause H2 (Termination on Default) of the Contract.

F3.2 In the event that the Authority is of the reasonable opinion that there has been a Material Breach of the Contract by the Supplier, then the Authority may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:

- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services, in accordance with clause H7 (Authority Step-in);
- (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
- (c) withhold or reduce payments to the Supplier, in such amount as the Authority reasonably deems appropriate in each particular case; and/or
- (d) terminate, in accordance with clause H2 (Termination on Default), the whole of the Contract.

F3.3 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Authority may charge the Supplier for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services.

F3.4 Where in the opinion of the Authority the Supplier has failed to supply all or any part of the Services in accordance with the Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Authority may give the Supplier written notice specifying the way in which its performance falls short of the requirements of the Contract, or is otherwise unsatisfactory.

F3.5 Where the Supplier has been notified of a failure in accordance with Clause F3.4 the Authority may:

- (a) direct the Supplier, to investigate, identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or
- (b) withhold or reduce payments to the Supplier, in such amount as the Authority deems appropriate in each particular case until

such failure has been remedied to the satisfaction of the Authority.

F3.6 Where the Supplier has been notified of a failure in accordance with Clause F3.4, the Supplier shall:

- (a) use all reasonable endeavours to immediately minimise the impact of such failure(s) to the Authority and to prevent such failure(s) from recurring; and
- (b) shall immediately provide the Authority with such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause and the progress of those measures until resolved to the satisfaction of the Authority. .

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

F4.1 The Supplier shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. All such documents shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract shall not relieve the Supplier of any of its obligations or duties under the Contract.

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

F4.3 The Supplier shall ensure that all its Sub-Contractors and suppliers retain each record, item of data and document relating to the Services for a period of not less than six (6) years from the date of its creation, and shall make them available to the Authority on request in accordance with the provisions of clause E9 (Audit). Should any Sub-Contractor or supplier refuse to permit the Authority to access the required records then the Authority shall have no obligation to pay any claim or invoice made by the Supplier on the basis of such documents or work carried out by the Sub-Contractor or Supplier.

F4.4 Where the Authority has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Authority, be sent by the Supplier to the Authority immediately.

F4.5 Where the Supplier was appointed based on a Consortium Tender, the Authority reserves the right in accordance with clause F4.1 (but shall not be required) to permit a transfer, assignment or novation of the Contract from the Supplier to another member of the Consortium upon the insolvency of the Supplier or for such other good reason as the Authority sees fit.

F4.6 Subject to clause F4.7, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- (a) any Contracting Authority; or
- (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 Authority; or
- (c) any private sector body which substantially performs the functions of the Authority,

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

F4.7 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F4.8, affect the validity of the Contract. In such circumstances the Contract shall bind and inure to the benefit of any successor body to the Authority.

F4.8 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F4.6 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):

- (a) the rights of termination of the Authority in clauses H1 (Termination on Insolvency and Change of Control) and H2 (Termination on Default) shall be available to the Supplier in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Supplier.

F4.9 The Authority may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F4.10 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party

reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

## **F5 Waiver**

- F5.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- F5.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A5.2 (Notices).
- F5.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **F6 Change Control**

- F6.1 Subject to the provisions of this clause F6, the Authority may request a Change to the Specification provided that such Change does not amount to a material change to the Specification.
- F6.2 The Authority may request a Change under clause F6.1 by notifying the Supplier in writing of the proposed Change in the form contained in Schedule 3 and giving the Supplier sufficient information to assess the extent of the proposed Change and consider to whether any change to the Contract Price is required in order to implement the Change to the Specification. The Authority shall specify a time limit within which the Supplier shall respond to the request for a Change to the Specification. Such time limit shall be reasonable having regard to the nature of the proposed Change to the Specification. If the Supplier accepts the Change to the Specification it shall confirm the same in writing.
- F6.3 In the event that the Supplier is unable to accept the Change to the Specification or where the Parties are unable to agree a change to the Contract Price, the Authority may:
- (a) allow the Supplier to fulfil its obligations under the Contract without the Change to the Specification; or
  - (b) terminate the Contract with immediate effect, except where the Supplier has already delivered all or part of the Services or where the Supplier 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. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause 12 (Dispute Resolution).

F6.4 Any Change to the Contract will not take effect unless recorded in a Change Notice and approved by the Authority.

F6.5 The provisions of clause F6.4 may be varied in an emergency situation where it is not practicable to obtain the approval of the Authorised Authority Representative within the time necessary to make the Change in order to address the emergency. In such a situation, Changes may be approved by a different representative of the Authority. However, the Authorised Authority Representative shall have the right to review such a Change and require a Change Notice to be entered into on a retrospective basis which may itself vary the emergency Change.

## **F7 Severability**

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

## **F8 Extension of Initial Contract Period**

F8.1 The Authority may by giving the Supplier not less than 6 (six) months' notice in writing extend the Contract for a further period or periods as set out in the Form of Contract provided.

F8.2 The provisions of the Contract will apply throughout any such Extended Period.

## **F9 Remedies Cumulative**

F9.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **F10 Entire Agreement**

F10.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

## **F11 Counterparts**

F11.1 This 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.

## **F12 Performance Management Framework**

F12.1 The Supplier shall deliver the Services in accordance with the Service Levels and KPIs set out in Schedule 5. Where the Supplier's performance fails to meet the relevant KPI, the Authority shall (subject to clause F12.2) be entitled to deduct the corresponding Service Credits from the next invoice or otherwise recover any amount as a debt due and owing.

F12.2 The Authority reserves the right to claim damages for failure to meet any KPI (as an alternative to clause F12.1) provided the Authority serves prior notice in writing of its intention to do so.

F12.3 The Authority shall be entitled to refine, vary or modify the KPIs, Service Levels and the Service Credits from time to time during the Contract Period.

## **G LIABILITIES**

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

G1.1 Neither Party excludes or limits liability to the other Party for:

- (a) death or personal injury caused by its negligence; or
- (b) Fraud; or
- (c) fraudulent misrepresentation; or
- (d) any breach of any obligations implied by Part II of the Supply of Goods and Services Act 1982.

G1.2 Subject to clauses G1.3 and G1.4, the Supplier shall indemnify the Authority for and keep the Authority (and its successors and permitted assigns) 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, or in consequence of, the supply, or the late or purported supply, of the Services or the performance, negligent performance or non-performance by the Supplier or its agents, employees or Sub-Contractors of its obligations under the Contract or any breach by the Supplier or its agents, employees or Sub-Contractors of any of the warranties set forth in Clause G2, or the presence of the Supplier 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 or Services given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier or its agents, employees or Sub-Contractors.

- G1.3 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.
- G1.4 The Supplier shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Supplier.
- G1.5 Subject always to clause G1.1, in no event shall either Party be liable to the other for any:
- (a) loss of profits, business, revenue or goodwill;
  - (b) loss of savings (whether anticipated or otherwise); and/or
  - (c) indirect or consequential loss or damage (provided that loss or damage arising from the Supplier's failure to diagnose (in a timely fashion or at all) or misdiagnosis in respect of any occurrence or outbreak of disease in animals in respect of which the Supplier is providing Services under the Specification will be considered a direct loss)
- G1.6 Subject to clause G1.1, the Supplier's liability under this Contract shall be limited to the sum of £1 million for each occurrence or series of occurrences arising from a single event provided that the number of claims shall not be limited.
- G1.7 Unless otherwise specified by the Authority, the Supplier shall, with effect from the Commencement Date take out with a reputable insurance company and maintain for the Contract Period the following policy or policies of insurance:
- (a) public liability insurance with a limit of indemnity of not less than £5 million per occurrence or series of occurrences arising from a single event;

- (b) employer's liability insurance with a limit of indemnity of not less than £5 million per occurrence or series of occurrences arising from a single event;
- (c) professional indemnity insurance in respect of any financial loss arising from any advice or Services given or omitted to be given by the Supplier with a limit of indemnity of not less than £1 million, which shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract.

G1.8 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.9 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

G1.10 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.

G1.11 The Supplier 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 Supplier, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Supplier is an insured, a co-insured or additional insured person.

## **G2 Warranties and Representations**

G2.1 The Supplier warrants and represents for the duration of the Contract that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Supplier;
- (b) in entering the Contract it has not committed any Fraud;
- (c) as at the Commencement Date, all information contained in the Tender or other offer made by the Supplier to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to

execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;

- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier 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 Supplier's assets or revenue;
- (g) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) any person engaged by the Supplier shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- (i) in the three (3) years (or period of existence where the Supplier has not been in existence for three (3) years) prior to the date of the Contract:
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;

- (k) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Supplier's obligations under the Contract;

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

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

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

- (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; or
- (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); or
- (c) a petition is presented for its winding up (which is not dismissed within fourteen (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; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (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; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Authority may terminate the Contract with immediate effect by notice in writing and without compensation to the Supplier where the Supplier 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 Supplier's creditors; or
- (b) a petition is presented and not dismissed within fourteen (14) days or order made for the Supplier's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Supplier 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; or
- (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 Supplier's assets and such attachment or process is not discharged within fourteen (14) days; or
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- (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 H1.2(a)-(g) occurs under the law of any other jurisdiction.

H1.3 The Supplier shall notify the Authority immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including where the Supplier undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Authority may terminate the Contract with immediate effect by notice in writing and without compensation to the Supplier within six (6) Months of:

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

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

H1.4 The Authority may terminate the Contract with immediate effect by notice in writing and without compensation to the Supplier where the Supplier 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; or
  - (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; or
- (g) any event similar to those listed in H1.4(a)-(f) occurs under the law of any other jurisdiction .

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

- (i) 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; or
- (ii) it is for any reason dissolved; or

- (iii) 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; or
- (iv) 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; or
- (v) 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; or
- (vi) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (vii) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (viii) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (ix) any event similar to those listed in H1.5(a)(i)-(viii) occurs under the law of any other jurisdiction.

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

## **H2 Termination on Default**

- H2.1 The Authority may terminate the Contract by written notice in accordance with clause A5.2 (Notices) to the Supplier with immediate effect if the Supplier commits a Default and if:
- (a) the Supplier has not remedied the Default to the satisfaction of the Authority within twenty-five (25) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
  - (b) the Default is not, in the opinion of the Authority, capable of remedy; or
  - (c) the Default is a Material Breach of the Contract.

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

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

### **H3 Termination on Notice**

H3.1 The Authority shall have the right to terminate the Contract at any time by giving sixty (60) Days written notice to the Supplier.

### **H4 Consequences of Expiry or Termination**

H4.1 Where the Authority terminates the Contract under clause H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. Where the Contract is terminated under clause H2 (Termination on Default), no further payments shall be payable by the Authority to the Supplier (for Services supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.

H4.2 Where the Authority terminates the Contract under clause H3 (Termination on Notice), no further payments shall be payable by the Authority to the Supplier except for Services supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority.

H4.3 Save as otherwise expressly provided in the Contract:

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

- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Corruption), 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 Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- H5.2 The Supplier shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H5.3 In the event of industrial action by the Staff, the Supplier shall seek approval to its proposals to continue to perform its obligations under the Contract.
- H5.4 If the Supplier's proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice in writing.
- H5.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Authority, the Supplier may request a reasonable allowance of time and in addition; the Authority will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

## **H6 Recovery upon Termination**

- H6.1 On the termination of the Contract for any reason, the Supplier shall at its cost:
- (a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the

possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;

- (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Supplier. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- (c) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or the completion of any work in progress; and
- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Supplier to conduct due diligence.

H6.2 If the Supplier fails to comply with clause H6.1(a) and (b), the Authority may recover possession thereof and the Supplier grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or Sub-Contractors where any such items may be held.

## **H7 AUTHORITY STEP-IN**

H7.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a “**Step-In Notice**”) that it will be taking action under this Clause H7 (Authority Step-in), at the Authority’s discretion, either:

- (a) Itself; or
- (b) with the assistance of one of the Other Geographical Lot Suppliers appointed by mini-competition in accordance with clause D10 or a third party

provided that the Supplier may require any such parties to comply with a confidentiality undertaking equivalent to Clause E4 (Confidentiality) to step-in to the whole or any part of the Contract until such time as a retender of the Services has been completed or for such other or lesser period as may be specified in the notice.

H7.2 The Step-In Notice shall set out the following:

- (a) the action the Authority wishes to take and in particular which part or parts of the Services that it wishes to control (the “**Required Action**”);
- (b) the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;
- (c) where applicable the date on which it wishes to commence the Required Action;
- (d) the time period which it believes will be necessary for the Required Action;
- (e) whether the Authority will require access to the Supplier's premises and/or the Sites; and
- (f) to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.

H7.3 Following service of a Step-In Notice:

- (a) the Authority shall take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action; keep records of the Required Action taken and provide information about the Required Action to the Supplier;
- (b) the Authority shall co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and
- (c) the Authority shall act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this Clause H7.
- (d) the Supplier shall co-operate with the Authority and shall (without limitation) promptly provide the Authority with all Sub-Contractor contact details and any other relevant information relating to Sub-Contractors.

H7.4 For so long as and to the extent that the Required Action is continuing, then:

- (a) the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and

- (b) no Service Credits shall be applicable in respect of Services that are the subject of the Required Action;
- H7.5 Before ceasing to exercise its step in rights under this Clause H7 the Authority shall deliver a written notice to the Supplier (a “Step-Out Notice”), specifying:
  - (a) the Required Action it has actually taken; and
  - (b) the date on which the Authority plans to end the Required Action (the “**Step-Out Date**”) subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause H7.6.
- H7.6 The Supplier shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a “**Step-Out Plan**”) relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.
- H7.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- H7.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause H7, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:
  - (a) limbs (b) or (c) of the definition of a Step-In Trigger Event; or
  - (b) limbs (d) or (e) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default).
- H7.9 To facilitate the exercise by the Authority of its step-in rights under this clause H7, the Supplier shall ensure that all Sub-Contracts contain the following provisions:
  - (a) add the following definitions:
    - “Authority” means the Secretary of State for the Environment Food and Rural Affairs;

“Main Contract” means the contract for the provision of TB Testing and related veterinary services entered into between the Authority and the [SUPPLIER] dated [ ];

(b) add the following clause:

“Notwithstanding anything to the contrary in this Agreement, the Authority shall be entitled, pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, in all respects as if it were [SUPPLIER], where the Authority has exercised its right of step-in pursuant to clause H7 of the Main Contract.”

## **H8 FORCE MAJEURE**

- H8.1 Subject to the remaining provisions of this Clause H8.3 (and, in relation to the Supplier, subject to its compliance with its obligations in clause D8, a Party may claim relief under this Clause H8 from liability for failure to meet its obligations under this 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 Supplier in performing its obligations under this 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 Supplier.
- H8.2 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.
- H8.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause H8 to the extent that consequences of the relevant Force Majeure Event:
- (a) are or ought to be capable of being addressed by the Supplier invoking the BCDR Plan; and/or
  - (b) are capable of being mitigated by any of the Services, but the Supplier has failed to do so; and/or
  - (c) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.
- H8.4 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.

- H8.5 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 Supplier 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.
- H8.6 Where, as a result of a Force Majeure Event an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event neither Party shall be liable for any Default arising as a result of such failure;
- H8.7 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 this Contract.
- H8.8 Relief from liability for the Affected Party under Clause H8.3 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause H8.2.
- H8.9 If the Supplier is substantially unable to perform the Services as a result of a Force Majeure Event for a period of three (3) successive months, the Authority shall be entitled to terminate the Contract by notice in writing to that effect.

## **H9 Retendering and Handover**

- H9.1 Within twenty-one (21) days of being so requested by the Authority, the Supplier shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.
- H9.2 The Authority shall take all necessary precautions to ensure that the information referred to in H9.1 is given only to potential providers who have qualified to tender for the future provision of the Services.
- H9.3 The Authority shall require that all potential suppliers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.
- H9.4 The Supplier shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Supplier is required to provide under clause H9.1.
- H9.5 The Supplier shall allow access to the Premises, in the presence of the Authorised Authority Representative, to any person representing any

potential provider whom the Authority has selected to tender for the future provision of the Services.

H9.6 For the purpose of access to the Premises in accordance with clause H9.5, where the Premises is on the Supplier's premises, the Authority shall give the Supplier seven (7) days' notice of a proposed visit together with a list showing the names of all persons who will be attending those premises. Their attendance shall be subject to compliance with the Supplier's security procedures, subject to such compliance not being in conflict with the objectives of the visit.

H9.7 The Supplier shall co-operate fully with the Authority during the handover arising from the completion or earlier termination of the Contract. This co-operation, during the period of the new Supplier setting up operations, shall extend to 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.

H9.8 Within ten (10) Working Days of being so requested by the Authority, the Supplier shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

## **H10 Exit Management**

H10.1 The Supplier shall comply with Schedule 7: Exit Management.

## **H11 Knowledge Transfer**

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

# **I DISPUTES AND LAW**

## **I1 Governing Law and Jurisdiction**

11.1 Subject to the provisions of clause 12 (Dispute Resolution), the 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 (and shall not be construed so as to) limit the right of the Authority to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any other court of competent jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

## **12 Dispute Resolution**

12.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (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 Supplier and the commercial director of the Authority.

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

12.3 If the dispute cannot be resolved by the Parties pursuant to clause 12.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 12.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Supplier does not agree to mediation.

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

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

- (a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (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 ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (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 ten (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 considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.

- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- (f) If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause I2.6.

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

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

12.7 In the event that any arbitration proceedings are commenced pursuant to clause 12.6:

- (e) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- (b) the Authority shall give a written notice of arbitration to the Supplier (the “**Arbitration Notice**”) stating:
  - (i) that the dispute is referred to arbitration; and
  - (ii) providing details of the issues to be resolved;
- (d) the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (e) if the Parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Authority under clause 12.7(b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

## **SCHEDULE 1: SPECIFICATION SCHEDULE**

This section sets out the Authority's requirements.

### **1. STRATEGIC OVERVIEW**

- 1.1 The Animal and Plant Health Agency (APHA) is an Executive Agency of the Department for Environment and Rural Affairs (Defra) and delivers the Animal Health and Welfare policies of Defra, Scottish Government and Welsh Government across Great Britain (GB). One of its principal functions is the safeguarding of animal health and welfare and public health, which in turn supports economic growth and trade. APHA uses a variety of Government paid veterinary services to help deliver the Government policies.
- 1.2 APHA has a critical role in the control and eradication of endemic diseases, most notably bovine tuberculosis (TB) an infectious disease of cattle. The scale of infection and the cost make bovine TB one of the biggest challenges that the cattle farming industry faces, particularly in the west and south west of GB. The Government needs to eradicate bovine TB to support the food and farming industry and to reduce costs to farmers and taxpayers. The costs to Government of TB control measures currently exceed £100m p.a. TB testing plays a crucial role in identifying infected herds and individual cattle, thus helping to reduce further spread of the disease.
- 1.3 APHA is responsible for organising TB testing in GB and this is largely delivered by private sector vets who are authorised as Official Veterinarians (OVs) to conduct this work on behalf of government.
- 1.4 To address questions that have been raised over commercial propriety and quality standards (particularly in relation to TB Testing), it was considered essential that the supply of veterinary services to Government in England and Wales was subject to a public procurement exercise. This will evidence value for money and establish quality standards integral to disease management. Officially TB Free status has already been achieved in Scotland. All governmental strategies include requirement for clear veterinary standards and disease control in line with national regulation and EU legislation.
- 1.5 In contracting for TB testing and Other Veterinary Services, it was recognised that an identified and established skilled workforce will result, working to agreed standards. This presents opportunity to request that this workforce is made available in an emergency subject to defined contractual terms.

### **2. GENERAL SCOPE**

- 2.1 The purpose of this tender exercise was to enable the Authority, APHA and the Welsh Government to buy Government paid veterinary services and to

enhance the national capability to respond to animal disease outbreaks. These would generally be described as official tasks or Official Controls under EU legislation.

- 2.2 The aim of implementing the new approach to the future supply of veterinary services is to:
- Improve the quality of TB testing in England & Wales, and thus better support ongoing TB eradication activity;
  - Ensure OV charges for TB testing reflect the true market costs of delivery
  - Deliver a flexible package of veterinary services to Government which can adapt to meet current and future needs, including tasks which are already commissioned.
  - Ensure experienced veterinary resource is made available by the Supplier as part of the nationwide capability to respond to an emergency
  - Enable APHA and Suppliers to better address poor OV performance by establishing clear corrective action.
  - Demonstrate value for money of procured OV services;
- 2.3 All Services are to be required as instructed by the Authority's Authorised Representative or an Authorised Representative of the APHA or Partner Body.
- 2.4 There is no guarantee that the indicative volumes of work will be offered and Suppliers should expect volumes to fluctuate due to changes in disease prevalence and Government policy.  
<https://www.gov.uk/government/collections/bovine-tb>  
Moreover, the Contract does not give the Supplier an exclusive right to carry out the Services and, in particular, the Authority reserves the right to retain certain in house in accordance with paragraph 7.19 of the Specification or otherwise to procure the Services in accordance with paragraphs 3.9 to 3.12 of the Invitation to Tender.
- 2.5 The Supplier will be required to comply with the Authority's Performance Management Framework which includes Key Performance Indicators (KPIs), Service Levels and Service Credit regime which are set out in Schedule 5: Performance Management Framework and forms a condition of Contract.
- 2.6 The Service Credits provide a mechanism whereby the Authority can attain meaningful recompense for the inconvenience and/or loss resulting from the Supplier's failure to deliver the level of services for which it has contracted to deliver.

- 2.7 The Supplier will be required to monitor and report on its performance of the services.

### **3. DETAILED SCOPE**

- 3.1 All Services must be carried out by an individual with the appropriate Official Control Qualification (Veterinary) (OCQ(V)) authorised by APHA, except in specified circumstances when, by agreement with the Authority, APHA or Partnering Body, an MRCVS who is not an OV or a non-MRCVS, may be deployed if permitted by legislation. The list of OCQ(V)'s and training available, can be obtained from the appointed national training provider. See Schedule 11: OCQ(V) Modules for a table of OCQ(V)s.
- 3.2 The Supplier must carry out the relevant checks to ensure that all directly employed or sub-contracted staff deployed in delivery of Services are legally permitted to work in the UK, and are otherwise capable of carrying out the Services. The Supplier must also verify the directly employed or sub-contracted staff's identity, employment history and qualifications.
- 3.3 In addition to the above, as part of the requirement under Service C, the Supplier must provide evidence of health surveillance and baseline security clearance (Disclosure Scotland) for all directly employed or sub-contracted staff who are going to be deployed, the cost of attaining this security clearance will be at the cost of the Supplier and cannot be passed directly to the Authority or Contracting Body.

### **4. CONTRACT AWARD**

- 4.1 The Contract is for the provision of the following Services (which are more particularly described in this Specification):
- a. Service A - The provision of a fully managed service to handle Tuberculin testing of bovine animals, meaning domestic cattle of the genus Bos, buffalo or bison in specific Geographical Lots within England and Wales
  - b. Service B - The provision of a fully managed service to handle other OV and veterinary services in specific Geographical Lots within England and Wales
  - c. Service C - The provision of a fully managed service to handle Incident response within England and Wales

### **5. AGENCY WORKERS REGULATIONS**

- 5.1 The Supplier shall comply with all statutory requirements as set down in the Agency Workers Regulations 2011. Further the Supplier shall fully indemnify the Authority for any claims instituted in any court or tribunal, the legal costs of defending such claims and reimburse for any monetary awards given in regards to any actions brought under the Agency Workers Regulations 2011 against the Authority, APHA or Partnering Body by an Agency Worker engaged by the Supplier to supply services to the Authority, APHA or Partnering Body.

## **6. STANDARDS AND REGULATIONS**

- 6.1 The Supplier shall comply with all current EU and UK legislation relating to health and safety of its Sub-Contractors, employees, customers and members of the public, including but not limited to The Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999 and subsequent amendments. The Supplier and all Sub-Contractors Health & Safety policy must cover the minimum standard laid out in the above legislation. Work must not be carried out in contravention of this legislation. The Supplier shall (without limitation) comply with the Suppliers Health & Safety at Work Policy and Stated Commitments are outlined with in Schedule 19.
- 6.2 It is the Supplier's own responsibility to carry out the necessary generic risk assessments and introduce control measures to ensure compliance with the foregoing and any other relevant legislation.
- 6.3 APHA Health and Safety guidance and generic risk assessments are available to be shared with the Supplier upon request. This includes the Generic Risk Assessment on Working with Animals (RA2) See Schedule 15: APHA Generic Risk Assessment – Working with Animals.
- 6.4 The Supplier must help to minimise the risk of disease occurring or spreading, safeguarding the health and welfare of animals and protecting the viability of businesses by adopting appropriate biosecurity measures, these must at a minimum be the equivalent of Defra and Welsh Governments Standards.

<https://www.gov.uk/controlling-disease-in-farm-animals#biosecurity-and-disease-control>

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

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

## **7 SUB-CONTRACTING OF VETERINARY BUSINESSES TO CARRY OUT WORK UNDER THE CONTRACT – SERVICES A-C**

- 7.1 Subject to clause 7.2, the Supplier shall offer work to any eligible veterinary business which offers Government funded OV services within Geographical Lot 2. In addition the Supplier may employ vets directly or engage self-employed individuals as Sub-Contractors.

### **Eligibility of veterinary businesses – Services A-C**

- 7.2 Any veterinary business offering OV services within Geographical Lot 2 should be offered the opportunity to act as a Sub-Contractor provided they meet all of the following minimum eligibility criteria:

- a) The business holds sufficient Employers' Liability, Public (Third Party) Liability and Professional Indemnity insurance for the work that they undertake.
- b) The business employs sufficient OVs, (at least one), with the OCQ(V)s required to carry out the work.
- c) The business implements a suitable biosecurity policy as defined with the Suppliers policy when visiting farm locations and Holdings.
- d) The business implements a health and safety policy, for farmed livestock and in particular for handling cattle.
- e) The business has sufficient IT capability to receive work, access information and report results including use of APHA's Sam system.
- f) The business has a system of quality assurance of the standard of OV work in place based on the principles of clinical governance in the current UK RCVS code.
- g) The business effectively manages the performance of its staff including assessing their performance when carrying out OV work and taking corrective action in the event of poor performance.
- h) The business must undertake to handle tuberculin and any other veterinary medicines used in the performance of this contract in accordance with the Summary of Product Characteristics published by the Veterinary Medicines Directorate.
- i) The business is willing to contract with the Supplier on terms and conditions and at rates that the Supplier uses for similar businesses in the Geographical Lot doing the same work or on such other terms and rates as may reasonably be agreed between the Supplier and the business,

provided that, the Supplier will not be required to take on such a business as a Sub-Contractor due to any unreasonable conduct on the part of the business or for any other good reason (in the opinion of the Authority), subject to the prior written agreement of the Authority.

- 7.3 The Authority will, as part of the Reporting Arrangements outlined in Section 14 of this Schedule, require a quarterly update of the businesses and individual OVs directly employed or sub-contracted. When a new Sub-Contractor is employed or rejected or one is dismissed, evidence must be provided to show how they were evaluated against the above eligibility criteria.
- 7.4 The Supplier must ensure that its sub-contracting arrangements contain robust and adequate systems for managing risk and include processes to facilitate the handling of complaints by any of their Sub-Contractors, End Users or other suppliers.
- 7.5 An escalation process to the Authority will allow any substantive complaint by Sub-Contractors, End User or suppliers to directly contact the Authority without fear or favour should any substantive complaint not be adequately dealt with by the Supplier.

#### **Rules for allocation of work – Services A-C**

- 7.6 The Supplier must apply the following rule to allocate the available work in a manner which provides an efficient service to the Authority, Partnering Body and the Keeper or other End-User
- a) request Keepers to identify a preferred veterinary business from the list of available Sub-Contractors,
  - b) use the Supplier's directly employed or other Sub-Contractor's staff where the Keeper does not express a preference.
- 7.7 The Supplier must only allocate the work to a sub-contracted veterinary business or to directly employed staff with whom they have a contractual relationship, subject to paragraph 7.3 above.
- 7.8 In doing so they must observe the following cascade of priorities:
- 1. If APHA has directed that a particular business or individual must not be used for the test in question then that must be respected.
  - 2. The particular business or individual receiving the work request must be capable of carrying the work out by the deadline notified to the Keeper in the case of TB testing or within the required timescale for non TB work.
  - 3. If the Keeper of the animals has expressed a preference for a specific eligible business or for directly employed staff to be

used, this must be followed (subject to paragraph 7.2), if one (1) and two (2) above are met.

4. However, if the preferred sub-contracted veterinary business cannot deliver the work on time then the Supplier will have the option to either use another Sub-Contractor or an individual vet directly employed by the Supplier.

- 7.9 The Supplier for Geographical Lot 2 can arrange for the transfer of work to the Supplier who holds the Contract for a neighbouring Geographical Lot.
- 7.10 The original Supplier is responsible for all work within their Geographical Lot. However, situations may arise near boundaries between Geographical Lots where there may be good practical reasons to transfer responsibility for providing Services in relation to a particular herd from the Supplier to the Supplier of a neighbouring Geographical Lot. Any such transfer of responsibility would be subject to agreement between the suppliers affected, APHA and the Keeper affected. Where such an agreement is reached, APHA will update the Sam system to record the amended relationship as the new default for the herd.
- 7.11 APHA will make arrangements, on Sam, to default the work for that County Parish Holding (CPH) to the agreed Geographical Lot Supplier; at this point the new Supplier will take on responsibility for the work being carried out.
- 7.12 It is a required that the Supplier completes the work commissioned to specified deadlines, meeting due dates. Failure to do so may result in contract breach.
- 7.13 It is the Supplier's responsibility to ensure that there is sufficient skilled resource to meet the peaks and troughs in work demand.

### **Equipment and Supplies**

- 7.14 The Supplier is required to hold sufficient equipment and supplies to deliver the services requested.
- 7.15 With the exception of Tuberculin, all materials and equipment must be provided by the Supplier at the Suppliers own expense. A list of equipment to be provided by the Supplier is contained within Schedule 14: List of Equipment to be supplied by the Supplier.
- 7.16 Equipment specified for use in TB skin Testing is listed within Schedule 17: APHA Procedural Instructions (May 2014). The Authority will advise the Supplier when any amendments to these procedural instruction are made.
- 7.17 In the case of an Incident (Service C) the Authority may (in its discretion) provide specialist equipment.

7.18 The Supplier shall ensure that all testing and other Services are carried out in accordance with APHA's Procedural Instructions (May 2013) which are set out in Schedule 17 and as they may be amended and updated from time to time.

### **Commissioning of work – Services A-C**

7.18 The Authority expects all commissioned veterinary services within the scope of Services A-C to be delivered by the Supplier for Geographical Lot 2.

7.19 APHA will keep a small proportion of work in-house. No reason will be given for individual cases but the rationale is to maintain expertise, provide efficient staff utilisation, assure quality and manage risks.

7.20 Work will be allocated to the Supplier's Geographical Lot within which the CPH number for the livestock is based. The location of the livestock is therefore associated to Geographical Lot 2 for which the Supplier has responsibility. However as per clause 7.11 some work may be transferred.

7.21 Services will be instructed by the Authority as shown below.

- For routine TB testing (Service A) this will normally be instructed electronically through Sam with at least sixty (60) days' notice, when this is not possible (e.g. breakdown tests) as much notice as possible will be given.
- For disease investigations (Service B) or Incident (Service C) a response may be required within less than one (1) day in which case direct telephone contact will be made with the Supplier.

7.22 The Supplier shall provide a single point of telephone contact for the Authority, APHA and other Partner Bodies by operating a twenty four (24) hour hotline. See Schedule 18: Suppliers Key Personnel, Contacts and Communications, for full contact details. It will be the Suppliers responsibility to maintain this Schedule.

7.23 The Supplier is responsible to work with the Keeper to complete the work commissioned by the specified due date. Where the Supplier has concerns e.g. Health and Safety, these must be raised and discussed with the Keeper, taking corrective measures to complete the work within in the specified time.

7.24 In exceptional circumstances where the situation cannot be resolved the Supplier may request that the Authority relieve the Supplier of their responsibility to complete the particular work instruction; any such requests must be supported by full evidence and justification and will be considered by the authority on a case by case basis.

7.25 The Supplier will deliver all the work instructed with the following exceptions:

- i. Withdrawal of work: In exceptional circumstances APHA may withdraw work after it has been allocated to the Supplier and reserve the right to do this at short notice. The Supplier will be notified of the decision, providing the reason for recall e.g. overlay with a planned TB gamma test.
- ii. Inefficient handling facilities: The Supplier must provide information to Keepers on the standards of handling facilities expected. When a Keeper is required to present animals for examination or testing, if they do not gather them in a way which avoids undue delay to the start of the work, or are unable to present them in a reasonably efficient manner, or cause significant delays when moving between locations, then the Supplier may decline to do the work and the Keeper will be responsible for any adverse consequences such as cross-compliance penalties or killing of untestable cattle. The Authority will not pay the Supplier for any aborted visit due to inefficient handling facilities.
- iii. Keeper chooses private arrangement: If the Keeper elects to pay an OV at a commercial rate and at their own expense then the Supplier will not be paid for the work. This could occur if, for example, the Keeper wants to use a specific OV in order to carry out health or fertility work during the course of a test and the OV is not eligible for payment under this contract. The Supplier is to notify APHA immediately this is confirmed with the Keeper, so that the work can be recalled for reallocation, removing Supplier responsibility.
- iv. Keeper's refusal: Keeper refuses to have testing undertaken; the Supplier must notify APHA immediately.
- v. Force majeure: Will apply where the Supplier is unable to perform the Services due to circumstances outside the Supplier's reasonable control (as more particularly defined within clause H8 of the Contract).

7.26 When the Supplier declines to carry out work for any of the reasons detailed above in paragraph 7.25, or due to any other exceptional circumstance then a record must be made of the reasons, the facts of the situation and any representations made by the Keeper. These must be retained for at least six (6) years and made available for inspection by the Authority on demand.

7.27 The Supplier must operate a transparent appeals process for Keepers to challenge such decisions and the appeal must be considered by someone impartial and independent from the person who took the original decision.

## **8 ECONOMIC, ENVIRONMENTAL AND SOCIAL BENEFITS – SERVICES A-C**

8.1 Having regard to the Public Services (Social Value) Act 2012, the Authority wishes to improve the economic, social and environmental well-being in the

Geographical Lot and, with reference to the Lowe report/Veterinary Development Council, to contribute to the capability of the veterinary profession in rural areas in order to maintain their social fabric, provide employment and support food security.

## 8.2 Thereby the Supplier must:

- a. Reduce GHG emissions by minimising the distance travelled and vehicle emissions in order to deliver the Government funded work. This could be achieved by:
  - i. utilising OVs close to where the Government funded work is to be delivered;
  - ii. combining OV visits into rounds;
  - iii. combining OV visits with other work in the locality to make mixed rounds;
  - iv. other means, which the Supplier can identify to reduce driving distances.
- b. Provide appropriate employment and training for individuals within the Geographical Lot to perform non-veterinary functions such as administration, reporting and record keeping. See Section 13: Description of the Fully Management Service Requirement – Services A-C
- c. Take the lead in promoting the safe handling of animals, in particular cattle at the time of TB testing, in order to reduce the incidence of injury to Keepers, vets and other staff.
- d. Avoid economic losses to Keeper through SFP cross-compliance penalties by enabling them to avoid overdue tests by providing an efficient OV service. See Section 10: Service A: Tuberculin testing of bovine animals in England and Wales

## 9 WORKFORCE - SERVICES A-C

### General

- 9.1 The Supplier must deploy staff either directly employed or employed by Sub-Contractors.
- 9.2 The staff must be eligible to be legally employed in UK and capable of effective communication with local animal Keepers. This must include fluency in the English language, both written and verbal.

- 9.3 OVs must have demonstrable skills in written and spoken English to enable the effective communication about veterinary topics with customers and colleagues demonstrated by one of the following:
- have undertaken undergraduate veterinary training in English;
- or
- have achieved the following scores in the academic international English Language Testing System (IELTS) within 24 months at time of application – Overall 7, Speaking 7, Listening 7, Reading 7, Writing 7.
- 9.4 If the Supplier believes an OV has adequate communication skills but does not fit one of the above requirements they must provide supporting evidence, gaining approval from the authority, before the OV is allowed to carry out work under this contract.
- 9.5 When the Supplier carries out work in Wales, in order to comply with the Welsh Language Scheme, a proportion of OV's and support staff must be able to speak the Welsh Language. Details can be found at the following link <http://www.defra.gov.uk/APHA-en/about-us/welsh-language-scheme/>
- 9.6 While tuberculin testing represents most of the initial value of this contract, APHA wishes to build a relationship with the Supplier which will enhance the national capability to eradicate bTB and to respond to future animal health threats. That requires surge capacity and a diverse skill set among OVs and other staff including administrators and technicians. The Authority therefore expects the Supplier to have at their disposal more staff, including Experienced OVs, than the minimum required to deliver the specified services.

### **Support Staff**

- 9.7 Support staff are important for the efficient organisation of testing and other activities for example: maintaining customer relationships, dispatch of samples, record keeping and collation of test results. Therefore the Supplier must ensure, staff either directly employed or employed by Sub-Contractors to be competent in their work, be aware of and apply Health & Safety regulation, be familiar with farming practices, farm or Holding locations and with veterinary matters within Geographical Lot 2.
- 9.8 The Supplier is required to ensure that support staff are given background in Animal Health and Welfare relating to the farming industry. To ensure that the support staff have a level of understanding, be familiar with related diseases, controls and what these mean to the Keeper.

- 9.9 Support staff are required to have strong customer relationship skills and be compliant with Supplier rules. Dependent on job role, staff must be able to manage logistical matters with agile scheduling of work, some to include work force planning, with effective use of the IT management systems provided.

### **Official Veterinarians (OV)**

- 9.10 The Supplier must ensure that their directly employed or sub-contracted OV's meet the following standards:
- 9.11 In order for an individual vet to act as an OV, they need to be a member of the Royal College of Veterinary Surgeons (MRCVS) in addition to them holding current authorised OV accreditation in OCQ(V)-ES (essential skills) and the service specific OCQ(V) e.g. OCQ(V) TT (tuberculin testing) in which they are carrying out the specific task of work. This will be in line with the governmental National OV Training roll-out arrangements 2014/15. OVs previously appointed must register with the Training Supplier by 31<sup>st</sup> March 2015. A revalidation requirement is being introduced for all OVs to ensure that quality standards are maintained using the new modular accreditation regime. During the transition period to the new training qualification OVs with panel appointments will retain grandfather rights provided that they register by the 31<sup>st</sup> March 2015 deadline.
- 9.12 The OV must have experience of undertaking clinical inspections and examinations, taking live and post mortem samples, recording observations. Also able to handle and examine domesticated and farmed species.
- 9.13 The OV must be fit and capable to take on the work, including any physical work required, based on the Supplier's own risk and occupational health assessments.
- 9.14 The OV needs to be aware of and observe sensitivities e.g. recognising customer needs, confidentiality when acting for the Authority and ensuring that any media communications are authorised with the Supplier and the Authority.
- 9.15 The OV must be able to work under pressure, work in uncertain situations and make balanced well-judged decisions using their professional knowledge and in accordance with APHA instruction and policies.
- 9.16 The OV must be able to undertake their own risk assessment, taking into account Health and Safety considerations, reporting back to the Supplier.
- 9.17 The OV must maintain accurate record keeping throughout, able to validate data related to tests.
- 9.18 The OV must be able as part of their professional duties to raise any concerns with the Keeper and Supplier on animal health and welfare, or notifiable disease.

## **Experienced Official Veterinarians (EOV)**

9.19 The Supplier must ensure that their directly employed or sub-contracted EOV's meet the above and following standards

9.20 In addition to clauses 9.11-9.18 above and in order to qualify as an Experienced OV, OV's must have working knowledge of

- a) the livestock industry within Geographical Lot 2 including familiarity with farm locations sufficient to provide an efficient service to the industry
- b) differential diagnosis of diseases found in Geographical Lot 2
- c) notifiable diseases of food producing species
- d) notifiable disease procedures, where there is clinical suspicion
- e) biology and control measures for bTB including effective biosecurity
- f) epidemiology of bTB and other notifiable diseases within Geographical Lot 2
- g) TB eradication policy applicable to Geographical Lot 2
- h) disease prevention and herd health planning
- i) Animal Health & Welfare regulation, being alert to fraudulent practice
- j) disease surveillance and giving holistic advice to Keepers, including disease risk and prevention
- k) providing effective clinical governance of inexperienced colleagues

### **As evidenced by:**

- a) At least three (3) years' experience of veterinary practice in the UK gaining knowledge of endemic disease controls and regulation; the majority of work must have been with food producing species in primary production
- b) At least one hundred and five (105) hours of recorded Continuing Professional Development, in the previous rolling three (3) year period, of which the highest proportion is relevant to food producing species including bTB prevention and control.

- c) Have OCQ(V)s ES, TT and SS or the equivalent accreditation in line with the governmental National OV Training roll-out arrangements 2014/15.
- d) Be competent at taking samples including blood samples from cattle, sheep and at least one of pigs, horses or poultry.

### **Minimum Workforce Numbers**

- 9.21 There can be surges in demand for resources available to carry bTB testing due to fluctuations in bTB incidence, other disease outbreaks, changes in policy and seasonal fluctuations in commercial veterinary work. The Supplier must have ample capacity to maintain an efficient service under all foreseeable circumstances including staff absence and when Experienced OVs are called on to deal with a disease outbreak (Incident) under Service C.
- 9.22 In order to provide the benefits of e.g. disease surveillance and holistic advice to Keepers during the course of OV activities and to provide effective clinical governance of inexperienced colleagues, the Authority requires that at least one third (1/3) of the veterinary workforce must consist of Experienced OVs. That gives a minimum ratio of no more than two (2) inexperienced vets per experienced vet. It is not necessary for the OV work to be distributed in the same proportions but the experienced OVs must be available to undertake more challenging tasks if necessary – See Schedule 13: Supplier’s Committed OV Workforce.

### **Senior Official Veterinarian (Senior OV)**

- 9.23 The Supplier must ensure that their SOV meets the following standards:
- 9.24 In line with the RCVS Code of Professional Conduct the Authority requires each Supplier to appoint a single named senior veterinary surgeon to the Senior Official Veterinarian leadership role within the business.
- 9.25 The Authority expect the named individual to have sufficient authority to have overall responsibility for professional matters, including clinical policy guidelines, procedures by which medicines are obtained, stored, used and disposed; and quality assurance of standard with procedures for addressing clients' complaints about the provision of veterinary services.
- 9.26 Further description of the Senior OV role and responsibilities are given under Section 16: Quality assurance – Services A-C, Supplier Appointment of a Senior Official Veterinarian.

## **10 SERVICE A: TUBERCULIN TESTING OF BOVINE ANIMALS IN ENGLAND AND WALES**

10.1 The TB Orders define bovine animals as including domestic cattle of the genus Bos, buffalo or bison; referred to as cattle or animals in this section.

10.2 All work must be undertaken in full compliance with the requirements of the applicable legislation, training and procedural instruction current at the service start date and following any subsequent amendment. Please see link below which gives access to pre-contract APHA OV instruction.

<http://www.defra.gov.uk/APHA-en/about-us/ov/>.

10.3 The Supplier must ensure the service for the delivery of tuberculin testing is in line with the latest standard operating instruction. This will be updated with specific enhancement following tender, within the period of transition, to reflect new operational processes working with Suppliers. See Schedule 12: Use of the APHA 'Sam' Computer System, for high level description of planned IT system use.

10.4 APHA will use the Sam computer system to commission tuberculin tests in accordance with Schedule 12.

10.5 The Supplier and Keeper must agree a test date that ensures that the test is completed by the due date.

10.6 OV's will be required to immediately input the test date on Sam when confirmed, with immediate update if it changes. This will enable joint inspections e.g. with the Local Authority or Rural Payments Agency (England) or Rural Payments Wales (RPW) of the Welsh Government to take place where appropriate.

10.7 All staff undertaking tuberculin testing must hold a current authorised OCQ(V)-ES and OCQ(V)-TT, or equivalent panel approval and conduct the test meeting legislation and test instruction current at the time of test, see Schedule 11: OCQ(V)Modules, for details.

10.8 Sufficient avian and bovine tuberculin will be provided and delivered by APHA or its supplier free of charge. Distribution arrangements to be agreed with the Supplier to identify the most efficient means for delivery, ensuring the Veterinary Medicines Directorate (VMD) regulations are met.

<http://www.vmd.defra.gov.uk/public/vmr.aspx>

10.9 The Supplier must hold sufficient materials which are fit for purpose to carry out the tuberculin test. Information relating to these materials is described within Schedule 14: List of Equipment to be supplied by the Supplier.

- 10.10 The Supplier must account for any cattle identified by the Cattle Tracing System (CTS), as present on the Holding but not tested, for example not eligible or no longer alive. Also account for any cattle present on the holding, but not yet registered on CTS. Any discrepancies must be reported to APHA (RPA or RPW).
- 10.11 For any test allocated where there is no eligible stock, the Supplier must inform APHA through Sam. It is assumed that this will be identified prior to OV visit. No fee will be paid.
- 10.12 If reactors are found OV's will be required to tag the animal, collect and submit DNA samples and report results immediately following the visit, see Schedule 17: APHA Procedural Instructions (May 2014).
- 10.13 When reactors are found Sam must be updated within one (1) working day with the input of results and within five (5) working days when no reactors are found.
- 10.14 The OV must provide appropriate advice to the Keeper on prevention and control of bTB during the course of the test. In particular to advise the Keeper to isolate reactor or inconclusive cattle and advise the Keeper of test results and the automatic movement restriction of cattle in accordance with the TB orders.
- 10.15 When reactor or inconclusive cattle are identified at test, the OV must hand the Keeper an information leaflet, explaining the automatic restrictions and rules that apply.
- 10.16 It is the Keeper's responsibility to arrange the TB test. In the event that the Keeper does not arrange and accommodate the testing or obstructs the process leading to the test being completed after the due date then the Keeper will be at risk of:

- losing part of their Single Farm Payment (if claimed)
- if reactor animals are discovered in a subsequent test then compensation can be reduced.

10.17 However, APHA does have discretion as to whether or not to apply these penalties if the Keeper was not at fault.

10.18 Even if a test does not go overdue there could be situations where the Supplier has failed to allocate an OV to carry out the test given reasonable notice by the Keeper as per clause 10.5. There may be costs to the Keeper such as:

- hiring staff and handling equipment for a test which are not used
- having to keep cattle housed for longer than foreseen
- being unable to sell restricted cattle promptly

10.19 Where the Supplier has, by their act, omission or default, caused any party to suffer loss or damage (whether as a result of failure to prevent or delay the spread of bTB or otherwise) they may be held liable for such damage in accordance with the Contract or by general operation of law.

## **11 SERVICE B: OTHER OV AND VETERINARY SERVICES IN ENGLAND AND WALES**

11.1 APHA may require diverse services to be delivered by OVs on behalf of Government, some of which can currently be defined, others which are yet to be defined and occasional ad-hoc activities.

- 11.2 All work must be undertaken in full compliance with the requirements of the applicable legislation, training and procedural instruction current at the service start date and following any subsequent amendment. Please see link below which gives access to pre-contract APHA OV instruction. For information, APHA Other Service instruction (May 2014) on Anthrax and Brucellosis is included within Schedule 17: APHA Procedural Instructions (May 2014). <http://www.defra.gov.uk/APHA-en/about-us/ov/>.
- 11.3 The following Services are those currently defined and which may be required:
- a) Full Brucellosis abortion investigations in cattle
  - b) Follow up abortion investigations in cattle
  - c) Brucellosis blood sampling
  - d) Initial Anthrax Investigations
  - e) Blood sampling of animals for other reasons, for example to investigate a positive bulk milk test.
  - f) Tuberculin Testing of Non-Bovine species
    - In England, to include deer
    - In Wales, to include deer, goats and camelids
  - g) Animal health and welfare activities to complement the work of APHA staff such as assistance with notifiable disease investigations, surveillance on farms and other locations such as markets, handling exotic or fractious animals.
- 11.4 This is not a definitive list of services which may be subject to expansion or revision by APHA at any time and will be made by the Change control process.
- 11.5 The work will be commissioned via Sam, with some requests supported by additional email, submission of forms or telephone request.
- 11.6 OV's will be required to submit samples, disease report forms and results (if applicable) immediately on visit completion. Wherever applicable the Supplier shall follow the APHA procedures set out in Schedule 17: APHA Procedural Instructions (May 2014) as amended and updated from time to time.
- 11.7 Sam must be updated within one (1) day to reflect commissioned visit or test completion.

11.8 APHA will expect to commission all veterinary services of this nature from the contracted Supplier for Geographical Lot 2.

11.9 Where certain tasks are commissioned regularly then, for the purposes of calculating the price payable in respect of each such task, the time allocated will be fixed as shown below in Table 1. The time allocated to other regular tasks may be fixed or capped by agreement between the Supplier and the Authority.

**Table 1: Commissioned Capped Tasks**

Task	Description of unit of activity	Fixed time per unit	Note
Bovine abortion investigation	Take samples of blood (serum), milk and foetal/vaginal swab as applicable.	15 minutes	
Individual bovine blood or milk sample	Take one sample from one animal	4 minutes per head	May be undertaken by a qualified lay blood sampler
Individual sheep, goat or camelid blood or milk sample	Take one sample from one animal	4 minutes per head	
Anthrax investigation	Take blood sample from carcass plus any other samples required, make smear and examine under microscope	30 minutes per carcass investigated	

11.10 For each task the payment based on time allocation includes the following as applicable and there will be no further payment for any equipment, including any of these items:

- Use of equipment such as a suitable microscope
- Use of consumables such as sampling tubes, swabs, needles
- Reagents such as methylene blue stain
- Packaging and postage of samples, first class post or equivalent
- Recording and reporting results

- Advice to the Keeper on isolation of animals, carcass disposal and other biosecurity measures

11.11 The time allocated to all the OV work carried out at a visit must be totalled and then rounded up to the nearest fifteen (15) minutes for invoicing purposes.

11.12 If the OV is already on the Holding to carry out a tuberculin test then no Per Instruction Fee is payable.

11.13 The OV must hold the requisite OCQ(V) or other current panel approval for the commissioned service they are carrying out, see Schedule 11: OCQ(V) Modules.

11.14 Normal deadline for these services would be within 24 hours of commissioning, unless stated otherwise by the Authority or APHA.

11.15 The historical data in Table 2 below provided the Supplier with an indication of the scale and value of the work within Geographical Lot 2 for Anthrax, Brucellosis Blood Sampling & Investigations and other Government paid services for the period April 2013-March 2014.

#### **Table 2 – Historical Data**



11.16 The Supplier pricing for Services B contained within Schedule 2: Pricing Schedule, will be based on the above data as a minimum for each year of the Contract for Service B provision.

## **12 SERVICE C: EMERGENCY RESPONSE**

12.1 The Authority acting on behalf of Government is required to plan, intervene, contain or stabilise any one or simultaneous animal health disease Incidents, often referred to as cases or outbreaks, which can occur anywhere within GB. If this situation arises, there is a need to supplement existing contingency

arrangement(s) with competent Experienced OVs that can respond as and when required.

- 12.2 Service C is intended to make available Supplier veterinary resource as part of the nationwide capability to respond to an emergency.
- 12.3 It is therefore a requirement that the Supplier maintains skills in their workforce and a proportion of this resource must be available to assist the Authority at short notice.
- 12.4 The veterinary workforce the Authority will seek to engage is dependent on the nature of the Incident. There may be Incidents which do not disrupt bovine TB testing or conversely routine testing may have to be scaled back thereby releasing further vets to join the disease control effort.
- 12.5 The base requirement is to have available across all Geographical Lots 100 Experienced OVs, as defined in Section 9: Workforce – Services A-C, Experience Official Veterinarian requirement. They must be available to be quickly called upon to work on disease control.
- 12.6 The Supplier is required to make available a minimum of 19 Experienced OVs, aggregated against a timescale of fourteen (14) calendar days, from point of initial formal request. This will be in addition to maintaining usual levels of routine OV work. This will be achieved by the Supplier operating a rota system amongst their contingent EOVS in order to ensure coverage is provided – see Schedule 13: Supplier’s Committed OV Workforce.
- 12.7 The Supplier must have more than the minimum number of Experienced OVs indicated in clause 12.6 above, in order to ensure that sufficient numbers will be available to provide ongoing services in the event of an Incident.
- 12.8 In the event of an Incident, if required the specified minimum number of Experienced OVs, as per clause 12.6 must be made available against Service C, within the deadlines for deployment anywhere in GB and for indefinite periods typically based on three (3) weekly periods of duty.
- 12.9 It is anticipated that Experienced OVs will be rotated, to cover the disease control activity.
- 12.10 Although Experienced OVs are contracted to work anywhere within GB. The Authority retains the right to approach the Supplier in the Geographical Lots closest to the Incident to respond first.
- 12.11 In addition the Experienced OVs may be required to participate in Incident simulation exercises. Initial requests for participants will be made with the Suppliers SOV. Costs of attending these exercises will be borne by APHA, meeting the hourly rate of pay in attendance, travel and subsistence in line with Schedule 16: Travel & Subsistence.

12.12 On veterinary deployment APHA will provide the relevant Incident specific induction training, detailing the scope of the task and role expected, and dependent on role appointing the Experienced OVs as Veterinary Inspectors(s) with associated powers of entry onto farm(s), taking enforcement action as necessary. Costs of attending these specific induction training events will be borne by APHA, meeting the hourly rate of pay in attendance, travel and subsistence in line with Schedule 16: Travel & Subsistence.

12.13 In an Incident where the Authority decides to re-prioritise or suspend all bovine TB testing and/or OV services in all or part of a Geographical Lot, the Geographical Lot Supplier will be expected to make available an equivalent number of OVs for deployment, based on the number of full time equivalents (FTE) which are then not required by the Supplier for delivering the business as usual routine service. These OVs do not have to meet the Experienced OV criteria but must be an OV as defined in the Section: Services A-C Workforce and capable of doing farm work and communicate effectively with the Keeper.

### **13 DESCRIPTION OF THE FULLY MANAGED SERVICE REQUIREMENT – SERVICE A-C**

13.1 The Supplier must provide a fully managed, high quality service which allows for the day-to day management of operations, meeting the business specification for Veterinary Services A-C.

13.2 Elements of the Managed Service to include, but not exclusively:

#### Business-to-Business Integration

- Supply Change Management
- Resource Management (veterinary / technical / administrative)
- Supply Chain Services
- Administrative controls, including contingency planning

#### Communication Services

- Communication Management
- Customer Services

#### Support Services

- Facility Management
- Transportation

## IT Information Services

- Data Management
- Information Systems Management
- Security
- Data Security

13.3 The Managed Service must include the preparation, planning, execution, control, and monitoring of activities with the objective of creating an effective and efficient operational process, organising the delivery of requested veterinary services by specified due dates. To synchronise the supply with demand, whilst providing enhanced customer service, meeting Keeper needs.

13.4 The Supplier must, but not exclusively:

- Take receipt of work.
- Complete and return the work by specified due dates.
- Keep auditable records in a secure state.
- Ensure accurate recording of results.
- Ensure data security.
- Maintain customer information, keeping account of any complaints.
- Provide a central contact line with confirmed opening times and outside office hours contact number.
- Provide administrative support.
- Provide IT to minimum specification.
- Maintain a list of Experienced OV's / other OVs.
- Maintain auditable financial invoice controls.
- Facilitate visits from external auditors.
- Hold sufficient supplies and equipment to carry out the Services as contained within Schedule 14: List of Equipment to be supplied by the Supplier.
- Provide full Quality assurance of all Services carried out.

- Demonstrate value for money.
- Ensure continuity of delivery including well established and trialled contingency plans in case of any unforeseen disruptions to delivery of the Service (as per clause D7).
- Provide key personnel (including full contact details) in addition to the SOV, who will be responsible for the management of the service provision (as per Clause B4).

13.5 In meeting the above managed service requirements there are essential features that relate to accountabilities, quality assurance, performance management, continuous improvement and governance controls.

13.6 The contract price shall be fixed for the first three (3) years, in the expectation that the Supplier will recover their start-up costs and then work with the Authority to find cost efficiencies, in particular for administration in line with each Suppliers submitted Continual Improvement Plan as described within Section 19: Continuous Improvement: Performance Management – Services A-C.

13.7 The Supplier shall have overall responsibility for the delivery of the specified Services as set out within Services A-C and monitored by the Performance Management Framework (PMF) as described in Schedule 5: Performance Management Framework.

13.8 It shall be the responsibility of the Supplier to meet the requirements of the PMF, to deliver performance of the Contract in accordance with UK and EU Law relating to the specified Services and will be assessed throughout the life of the Contract.

13.9 The Supplier's performance under this Contract will be monitored, measured and controlled by the Authority. The Supplier shall be required to maintain evidence of the level of service delivered.

13.10 The Supplier shall be responsible and accountable for the provision of qualified, authorised and competent directly employed staff and staff employed by their Sub-Contractors to perform the operational duties required by the Contract.

#### **Governance – Services A-C**

13.11 Governance of the Contract will be in line with the Authority's Terms and Conditions and Governance process as described within Schedule 6; Contract Governance.

13.12 The Authority will interact with the Supplier at various levels including operational delivery, with regular Review Meetings and an Annual Review Meeting of overall performance.

13.13 Generic contract management escalating processes will apply, with issues recorded in the Suppliers Issue Log and where resolution cannot be achieved, escalated to the Authority for both parties to discuss and agree remedial action or move to dispute resolution.

13.14 The Supplier shall set up and maintain a Risk Register and will be responsible for identifying, evaluating, addressing and monitoring risks. High level risks will be shared with the Authority at the Review Meetings.

### **Performance Management – Services A-C**

13.15 The performance of the Supplier will be managed and sanctioned through the whole Contract period under a Performance Management Framework, which is outlined within Schedule 5: Performance Management Framework.

13.16 Key Performance Indicators (KPIs) are essential in order to align the Suppliers performance with the requirements of the Authority and to do so in a fair and practical way. KPIs have to be met; otherwise if not met could be an indication that the service is failing and in such instances the use of service credits may be implemented.

### **Service Credit Principles**

13.17 The use of a 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

13.18 The use of service credits is governed by, but not limited to the following principles, as outlined within Schedule 5: Performance Management Framework:

- Service credits sit within the wider service management approach being pursued by the Supplier(s) and the Authority.
- The service credit regime would be instigated on each occasion where there is a service failure (i.e. where it is recognised by the Authority that the standards have fallen below the minimum). This will give rise to consequences set out in Schedule 5: Performance Management Framework.

### **Required next steps for the Supplier and Authority post contract award**

13.19 A list of KPI's set out in Schedule 5: Performance Management Framework. These shall be enacted immediately upon commencement of the delivery of the Service. During the term of the Contract the Authority reserves the right to amend, replace or introduce new KPI's

- 13.20 It is expected that the Authority will start to measure the KPIs one (1) month after the service Commencement Date of the Contract.
- 13.21 At the end of the first quarter of the commencement of the contract, the Supplier and the Authority will hold a Review Meeting to measure performance; review the effectiveness of KPIs and how the service credit arrangements would have worked during this pilot period.
- 13.22 The Supplier and the Authority will agree to adjust the KPI set as appropriate before the end of the first quarter and in preparation for the end of the second quarterly Review meeting.
- 13.23 The Supplier and the Authority will formally review performance against the refined KPI set at the second quarterly Contract Review meeting and thereafter applying service credits as outlined in Schedule 5: Performance Management Framework.
- 13.24 The Supplier and the Authority will hold a final Review Meeting at the end of the Contract.
- 13.25 Should either the Supplier or the Authority decide to discontinue the service at any point during the agreed period, a final Review Meeting will be held.
- 13.26 Should both the Supplier and the Authority decide to proceed with the service beyond the end of the agreed Contract period three (3) years, quarterly Review Meetings and annual Review meetings will continue until the Contract extension period concludes.

## **14 REPORTING ARRANGEMENTS**

- 14.1 Reporting arrangements will be aligned with the agreed PMF and governance controls, requiring both the Authority and the Supplier to review and measure the performance level of service provided. This will be linked to the agreed Suppliers KPI's, continuous improvement plan and quality assurance controls; which the Supplier must demonstrate are met.
- 14.2 Reporting will be monthly, with quarterly reports on the list of Sub-Contractors as per clause 7.3.
- 14.3 The Supplier shall put in place monitoring arrangements to evidence the performance level of service provided. The IT system Sam will provide some management information, with the functionality to export by file, allowing the Supplier to retain records. Detail will include a list of the work completed with the calendar month.

- 14.4 Similarly quality assurance controls must be measurable meeting percentage improvement against KPI's and against the Suppliers agreed targets and measures set, determining the quality assurance of the fully managed service, see Section 15: Quality Assurance – Services A-C.
- 14.5 The Supplier in carrying out audit of TB Testing Services must provide a monthly report giving a breakdown of the number of field audits by month carried out year-to- date, the findings at each of the field audits carried out within the month and actions being taken to resolve non-compliance identified.
- 14.6 While there is action being taken, the detail of the field audit will continue to be reported on against the original month until clear. The Supplier must apply field audit tests to the standards and checks detailed in the field audit instruction and action on non-compliance as described at Schedule 17: APHA Procedural Instructions (May 2014). This audit instruction may be updated periodically by the Authority.

## **15 QUALITY ASSURANCE – SERVICES A-C**

- 15.1 In line with the fully managed service referred to in Section 13: Description of the Fully Managed Service Requirement – Services A-C, the Supplier is accountable for delivering a service which is quality assured. This covers all aspects of veterinary, technical, administrative and financial activity. As such the Supplier must work towards and achieve third party accreditation (e.g. ISO9001 and/or RCVS Practice Standards Scheme and/or accredited equivalent assurance).
- 15.2 As a minimum the Supplier must have an internally managed system of quality controls, to provide assurance that service standards are maintained across the whole end-to-end process.
- 15.3 The Supplier must ensure that there is sufficient Senior OV and EOVS expertise held to provide adequate quality control and assurance.

## **16 SUPPLIER APPOINTMENT OF A SENIOR OFFICIAL VETERINARIAN**

- 16.1 In line with the RCVS Code of Professional Conduct, the Authority requires the Supplier to appoint a single named veterinary surgeon as the Senior Official Veterinarian (Senior OV) who must hold the senior veterinary leadership role within the business.
- 16.2 The Senior OV must have sufficient authority to have overall responsibility for professional matters, including clinical policy guidelines; procedures by which medicines are obtained, stored, used and disposed; quality assurance of standards; and procedures for addressing clients' complaints about the provision of veterinary services.
- 16.3 The Senior OV must be fully competent in the performance of OV functions and exercise effective control of veterinary professional conduct and performance. They must be an UK MRCVS and hold as a minimum, OCQ(V)s in ES, TT and SS once these are available.  
<http://www.rcvs.org.uk/advice-and-guidance/code-of-professional-conduct-for-veterinary-surgeons/supporting-guidance/veterinary-team-and-business/>.  
<http://www.rcvs.org.uk/advice-and-guidance/code-of-professional-conduct-for-veterinary-surgeons/supporting-guidance/clinical-governance/>
- 16.4 The Senior OV may exercise their authority through direct oversight of individual OVs or may delegate responsibilities to similarly qualified deputies, who may work in sub-contracted veterinary businesses provided that a system of reporting is in place to ensure that effective clinical governance is being maintained.
- 16.5 The Senior OV must ensure that every OV providing services under this Contract has access to an experienced and expert colleague to provide oversight and guidance.
- 16.6 The Supplier may choose to provide additional training and assurance of OV activity, but this will not be in place of the APHA approved training and the Authority will not accredit this training.

## **17 QUALITY ASSURANCE RESPONSIBILITIES OF THE SUPPLIER**

- 17.1 The Suppliers responsibilities will be:
- a) To cover review and evaluation of processes, performance and all individuals directly employed or sub-contracted who are carrying out the work.
  - b) To support Senior OVs, EOVs and OVs allowing time to undertake timely revalidation of their OCQs and other relevant CPD.
  - c) To ensure that OVs meet eligibility criteria and hold all the required qualifications and that they are current at the point of any test application and that latest standard operating instruction is understood.

- d) To ensure that the internal quality assurance of services is ongoing throughout the contract, evidenced by quality assurance plans.
- e) To ensure there is a programme of field audits that include the evaluation of individual vets. The Supplier must take a risk based approach to prioritising audit activity, taking into account for example: previous audit results, administrative inefficiency, anomalies in results etc.
- f) To maintain records of audits, and other quality assurance review and evaluation activities, making them available as required. Records must include corrective actions planned and track progress through to satisfactory resolution.
- g) To manage the relationship with a Keeper if problems arise.
- h) To escalate to APHA any issues that cannot be satisfactorily resolved by the Supplier alone.

**Specifically for TB skin testing:**

- i) To ensure that field audits of TB Tests are in accordance with APHA's protocol contained within Schedule 17: APHA Procedural Instructions (May 2014), or an equivalent agreed with APHA.
- j) To provide monthly reports to APHA of audit findings and other quality assurance activities, including plans for corrective actions and tracking of progress through to satisfactory resolution, to consolidate these reports into quarterly and annual summary reports. These reports will be used to establish a baseline of the quality of service delivery and will be used to inform the Suppliers Continuous Improvement Plan.
- k) To ensure that each OV deployed on TB skin testing (whether directly employed by or sub-contracted by the Supplier), is subject to a field audit at least once every twenty four (24) months.
- l) Those Auditors may be employees of the Supplier or their sub-contractors (internal assessor) or third party (external assessor).
- m) Ideally audits will be unannounced.
- n) That on request of APHA the Supplier to audit a specific OV, if particular concerns have been raised.
- o) To take corrective action on audit findings as necessary, including
- p) Instigate immediate corrective action during the test where appropriate
- q) Immediately report to APHA any failures that might invalidate a test. Where APHA deems that a test is invalid the Supplier shall be required to repeat the test at no additional cost to the Authority (in which case,

where the Supplier has been at fault, the Authority reserves the right to recover the cost of any tuberculin used in the re-test).

- r) In some cases suspend an OV from undertaking further Government work and following investigation APHA may refer serious cases to the RCVS
- s) To have measures in place to correct poor performance by Sub-Contractors if they are not managing the performance of their OVs effectively.

#### **For Other Veterinary Services:**

17.2 To have similar quality assurance measures to those for TB skin testing but are expected to be proportionate to the range and volumes of services commissioned.

#### **18 APHA AUDITING AND SUPPORT TO EXTERNAL AUDIT**

18.1 APHA will undertake periodic audits of the Supplier's system of control and assurance. In addition, APHA will undertake field audits which may be unannounced.

18.2 Suppliers and their sub-contracted bodies must co-operate with any other audit requested by the Authority, APHA, Partner Body or other governmental organisations. This may include:

- Financial audit
- International evaluations, notably missions of the Food and Veterinary Office of the European Commission, which themselves may include field audit

#### **19 CONTINUOUS IMPROVEMENT – SERVICES A-C**

19.1 During the post award Contract refinement period the Supplier shall develop a Continuous Improvement Plan, to be agreed by the Authority. The Continuous Improvement Plan will be a fully developed plan based on the tender proposals made by the Supplier in connection with Continuous Improvement under question E11 within the ITT.

19.2 Once agreed, the Supplier shall comply with and provide the Services A-C in accordance with the Continuous Improvement Plan, the Performance Management Framework as outlined within Schedule 5: Performance Management Framework and the Governance process as outlined within Schedule 6: Contract Governance.

19.3 During the Contract Period, the Supplier shall develop, maintain, and improve performance including quality with a view to enhancing the overall delivery of Services A-C.

- 19.4 The Supplier shall have an ongoing obligation throughout the Contract Period to identify new and potential improvements to the Services which shall include, but are not limited to:
- a. New and evolving relevant technologies which could improve the Services A-C.
  - b. New or potential improvement which enhances the quality, responsiveness, procedures, methods and customer support services
  - c. Changes in business processes and ways of working that would enable the Services to be delivered at lower costs and /or at greater benefits to the Authority and/or Partner Body
- 19.5 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvements should be implemented. The Supplier shall provide any further information that the Authority requests.
- 19.6 In accordance with Clause D8 of the Contract, the Supplier shall be obligated at all times to seek to improve its efficiency in providing the Services to the Authority with a view to reducing the level of the Contract Prices in light of such efficiency gains.
- 19.7 Where, in the Continuous Improvement Plan that the Supplier is required to submit as part of its tender, the Supplier has identified any potential area of cost savings, that can be achieved, the Supplier will be contractually bound to deliver those cost savings.
- 19.8 The Supplier shall identify and report on the Continuous Improvement Plan and any proposed improvements at each quarterly Contract Review meeting. If the Authority wishes to incorporate any improvement, changes will be made by a Change to the Contract.
- 19.9 Continuous improvement of the service is a key requirement of the Contract and the Supplier shall be required to actively participate in benchmarking activity throughout the length of the Contract.
- 19.10 A process will be put in place to protect any commercially sensitive information or processes but it is a requirement that the Supplier will co-operate and participate in benchmarking activity, which will include an annual event on 'Best Practice' that will deliver more efficient and improved quality outcomes for the Authority.
- 19.11 During the Contract period the Supplier will be required to arrange for annual mini-surveys to be undertaken with the Keepers to determine the degree of Keeper satisfaction of the Service being provided. This will form part of the

Suppliers Continual Improvement Plan and the information used at 'Best Practice' events.

## **20 FINANCIAL**

### **Financial Audit**

- 20.1 The Authority will carry out occasional financial audit checks. The TB Test checks (Service A) will trace cost down to test / animal levels and for Other Services (Service B) down to captured record of time spent.
- 20.2 If requested by the Authority' the Supplier must provide evidence of their own financial audit controls.
- 20.3 If requested by the Authority, the Supplier must provide for information, a detailed breakdown of the component rates for the fully managed service.

This will include breakdown of:

- Staff Costs (both direct & indirect sub-contracted)
- Admin Costs
- Consumables Costs
- Travel/mileage applied as Per Instruction Fee
- Supplier auditable financial controls carried out

### **Pricing Model**

20.14 As per Schedule 2 – Pricing Schedule

### **Other financial considerations**

- 20.15 The Supplier should be aware that they may incur liability to Keepers where the Keeper has suffered loss or damage as a result of the Supplier's negligence or other breach of duty. The Supplier must have a means to settle such claims either directly or through their insurer.
- 20.16 The process by which claims will be settled either by the Authority or the Supplier will be agreed post-contract award.

## **21 USE OF THE APHA 'Sam' COMPUTER SYSTEM – SERVICES A-C**

- 21.1 For this Contract APHA will commission tuberculin tests and other Services using the computer system Sam.
- 21.2 Description of the Supplier's use of Sam is included within Schedule 12: use of the APHA 'Sam' Computer System.

21.3 The use of Sam by the Supplier and its Sub-Contractors is compulsory unless specified otherwise by the Authority

## **22 TRANSITION – SERVICES A-C**

22.1 The successful move from existing arrangements to the new contracted Supplier must be both effective and efficient. It is **critical that there is no interruption** to the TB testing programme and to minimise this risk it is essential that the transition is well planned and carefully managed.

22.2 There will be three (3) stages to the Transition Period:

I. Initiation

ii. Preparation,

iii. Implementation

22.3 The Transition Period will take place between January 2015 and March 2015, being dependent on the completion of modifications to the Sam computer system.

22.4 Regular meetings, at the discretion of the Authority and or APHA, will be held throughout the transition period to capture progress against plan, discuss actions and any new risks or issues identified. The Supplier must be appropriately represented in person at the meetings so that decisions can be made.

22.5 The Supplier is responsible for any travel and subsistence costs incurred as a result of attendance at these meetings.

22.6 The APHA IT system, called Sam, is being enhanced to enable the sending of work orders to the Supplier at the Service Commencement Date. The Supplier will have system portal access and at the Service Commencement Date will take on the responsibility for all new work commissioned. Work previously allocated direct to OV Practices will remain the responsibility of each individual practice, until completion.

22.7 The Authority will work with the Supplier to finalise operational processes to make the commissioning and organisation of work efficient. Once agreed, the APHA operational processes will be the same, applied across all Suppliers.

22.8 The Supplier will be responsible for all their start-up costs incurred during the Transition Period.

22.9 The Authority requires the Supplier to ensure that Services A-C are taken on and maintained effectively and efficiently from the Service Commencement Date.

### **Initiation**

- 22.10 Following Contract award, the Authority will hold a Start Up meeting to discuss the transition of work from the existing arrangement to the new contracted Supplier service.
- 22.11 The purpose of the meeting is to gain a shared understanding and agree all the preparatory steps necessary to both make-ready and introduce the changes. This will take into account timescales, business change considerations, communications, reporting needs and forecast volumes of work.
- 22.12 The Supplier and the Authority plans will be drawn into one shared transition plan, defining the various activities and tasks for completion, to agreed timescale. The Supplier must identify the activities and tasks they will need to complete, in order to confirm their own readiness for service start.
- 22.13 Based on information gained at the initiation stage, APHA may wish to pilot the IT system and business processes with a Supplier. However the current intention is to commence service start with all Suppliers.

### **Preparation**

- 22.14 Working to the agreed transition plan, the Authority and Supplier will complete their agreed activities, reporting on progress made. This will include gaining agreement on operational process.
- 22.15 In advance of the Service Commencement Date APHA will need to set up the Supplier and their Sub-Contractors on the system, checking that detail held is correct. Suppliers must provide details of their Sub-Contractors to agreed timescale, before the Service Commencement Date.
- 22.16 The Supplier shall be required to confirm their readiness prior to service commencement. APHA will seek Supplier assurance that resources, processes and systems are ready against agreed readiness criteria.

### **Implementation**

- 22.17 This phase will see the service start with allocation of work.
- 22.18 At the Service Commencement Date the Supplier will be able to register via the Government Gateway onto the Sam system. When logging on the Supplier will be able to view any work orders sent to the 'Supplier work basket', at which point the Supplier will take responsibility for the work listed.
- 22.19 As a natural course of the work management process, the work will build up over the first three (3) months as the new work is directed to the Supplier. TB Test notices will be issued to Keepers, giving the name and contact details of the Supplier.

## **23 FUTURE PROVISION – SERVICES A-C**

- 23.1 The Authority shall be entitled to assign or otherwise dispose of its rights and obligations under the Contracts for Services A-C to any other Government Body and any Private Sector Body which substantially performs any of the functions that previously had been performed by the Authority.
- 23.2 The Authority shall be entitled to:
- assign, novate or otherwise dispose of its right and obligations under the Contract or any part thereof to any other to any other body, including any devolved administration within the United Kingdom; or
  - novate all or parts of the Contract to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by Defra, including any devolved administration within the United Kingdom
- 23.3 On an ongoing basis, the Authority will review the delivery of the specified services to optimise efficiency. Should this review identify other duties/services appropriate to the skills utilised in the Contract these may be added by the means of Change to Contract.
- 23.4 The Authority will review the delivery of the specified services and work done for other Government bodies and agencies to optimise efficiency. Should this review identify other duties appropriate to the skills utilised in this contract these may be added by the means of Change to Contract.
- 23.5 The Authority shall be entitled to respond to policy changes, for example if the Keeper becomes liable for TB Testing costs, and shall not incur termination costs when complying with these policy changes.

## SCHEDULE 2 - PRICING SCHEDULE

### 1 Service A: TB Testing Services

- 1.1 A single fixed Per Instruction Fee will be paid per commissioned TB test completed. The fee is intended to cover overhead cost of the fully managed service, travel time and expenses. By paying a fixed Per Instruction Fee the Authority intends to provide an incentive to minimise driving distances and reduce GHG emissions.

- 1.2 The total fee payable per commissioned TB test completed will consist of the Per Instruction Fee + (the TB Test Unit Cost multiplied by the number of animals tested), as shown in Table 1 above.

- 1.3 For any test allocated where there is no eligible stock, the Supplier must inform APHA through Sam. The assumption is that this will be identified prior to visit. No Per Instruction Fee will be paid.

### 2 Service B: Other OV and Veterinary Services

- 2.1 Other Services Service B requirements will be calculated against the Supplier's submitted hourly rate and Per Instruction Fee, as shown in Table 2 below.

- 2.2 The hourly rate will be chargeable and rounded up to the nearest 15 minutes unless agreed otherwise. If certain tasks are commissioned regularly the Authority in agreement with the Supplier, may introduce a fixed standard time allocation for some services.

- 2.3 The hourly rate applies to actual time spent on the Holding or other location carrying out the specified tasks including report writing (which may be completed at the office).
- 2.4 The hourly rate does not include travelling time.
- 2.5 A single fixed Per Instruction fee will be paid once the activity is complete. The fee is intended to contribute towards overhead cost of the fully managed service, travel time and travel expenses.
- 2.6 By paying a fixed Per Instruction fee the Authority intends to provide an incentive to minimise driving distances and reduce GHG emissions.
- 2.7 If the OV is already on the Holding to carry out a tuberculin test then no Per Instruction Fee is payable.
- 2.8 Across the Contract the actual time recorded as spent will need to be captured, the information being added to Sam on completion of the commissioned task. It will be each Supplier's responsibility to keep an accurate record, capturing the start and finish time(s), monitoring the actual times recorded. The reason for any excessive time taken outside of the Suppliers norm should be captured. The Authority will carry out occasional audit check.

### **3 Service C – Emergency Disease Outbreak Response**

- 3.1 Service C requirements will be calculated against the Supplier's submitted hourly rate and day rates as shown within Table 3 below.
- 3.2 The Day rate is the price charged for one (1) day, whereby a day is considered for this Contract as a period of ten (10) hours, within the hours of 06:00 to 20:00 Monday to Sunday. Where the total number of hours spent results in the cost exceeding the Day Rate, the Day Rate shall apply.

- 3.3 Service C requirements will not attract a Per Instruction fee.
- 3.4 For simulation exercises payment will be paid at the contracted hourly rate based on actual time spent carrying out the specified tasks. This includes report writing and Incident training (which may be completed at an office location).
- 3.5 Allowances and subsistence, which are payable only in respect of response to a Service C Incident, will be based on the rates and ruling applicable to Civil

Servants at the time of the Service being delivered, see Schedule 16: Travel and Subsistence.

- 3.6 For the avoidance of doubt, no Contract Charges shall be payable in respect of the Transition Services.

### **Prices during the Contract Period**

- 3.7 All prices are to be a fixed rate for the duration of the Initial Contract Period and no inflationary increases will be considered during this Initial Contract Period. However, price reviews may take place during the Contract if:
- a) a price reduction is to be applied e.g. based on Continual Improvement activity outlined in paragraph 13.6 of Schedule 2.
  - b) the Contract is extended in agreement with both parties; with accordance the Consumer Prices Index at the time of extension and inline with the Terms and Conditions of the Contract,

### **Pay arrangements**

- 3.8 For Services A-B, payment will be for all work completed and submitted on Sam within the previous calendar month.
- 3.9 A commissioned work activity will be deemed complete on input of the results (Service A) and all required screen entries (Services A-B), on the IT system Sam unless the Authority deems the test result to be invalid following a quality assurance review under Schedule 2, Section 17: Quality Assurance Responsibilities of the Supplier.
- 3.10 If screen entries are completed on the first of a new month, payment will be made the following month.
- 3.11 Supplier reconciled invoice(s) must be submitted monthly by the 10<sup>th</sup> of the new month. The Supplier is encouraged to submit invoices by the 5<sup>th</sup> working day so that any exceptions can be identified and reconciliation take place.
- 3.12 The monthly invoice(s) must be accompanied with support documentation listing by 'Work Schedule activity' unique identifier(s), the commissioned work completed on the Sam system. The documentation should be in Excel or similar format as may be required by the Authority.
- 3.13 APHA will carry out a check of invoices and if there is discrepancy between the anticipated invoice figure and the invoice received, this will be raised with the Supplier.
- 3.14 Once invoice(s) submitted have been approved, payment will take place within 10 working days. This will be by BACS arrangement.

- 3.15 The Supplier must ensure that all invoices received by the Sub-Contractor are paid promptly, within ten (10) days of receipt of a valid invoice, as outlined in Clause C2.
- 3.16 VAT will be charged at the standard prevailing rate (currently 20%).

## SCHEDULE 3 - CHANGE CONTROL

### CHANGE CONTROL NOTE

CCN number:

Contract title and reference:

Change Control title:

Number of pages attached:

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

IT IS AGREED as follows

1. With effect from [date] the Original Contract shall be amended as set out in this

Change Control Note:

Change requestor/originator:
Summary and reason for change:
Revised Contract Price
Revised payment schedule:
Revised Specification:
Revised Contract Period:
Revised programme of work:
Change in Contract Manager(s):
Other change:

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

Signed for and on behalf of the Supplier:

By:

Name:

Title:

Date:

Signed for and on behalf of the Authority:

By:

Name:

Title

(Authorised  
Authority  
Representative):

Date:

## SCHEDULE 4 - COMMERCIALY SENSITIVE INFORMATION



## **SCHEDULE 5 - PERFORMANCE MANAGEMENT FRAMEWORK**

- 1 As part of the Authority's continuous drive to improve the performance of all Suppliers, this Performance Management Framework (PMF) will be used to monitor measure and control all aspects of the Supplier's performance of contract responsibilities.
- 2 The PMF purpose is to set out the obligations on the Supplier, to outline how the Supplier's performance will be evaluated and to detail the sanctions for performance failure.
- 3 In addition to the KPI Table at the end of this Schedule, the Authority may from time to time define any reasonable performance management indicators for the Supplier under the following categories:
  1. Contract Management
  2. Delivery and support
  3. Quality of Service
  4. Cost
  5. Continuous Improvement

The above categories are consistent within all Contract awards allowing the Authority to monitor the Supplier's performance at both individual contract level and at enterprise level with the individual Supplier.

### **Management of the PMF**

- 4 APHA will produce a monthly Performance Management report, detailing the Supplier's performance against KPI's. The report will be circulated to the Supplier on a monthly basis.
- 5 The Supplier will maintain their own management reports, including Issues Log, which will include detail on periodic checks to ensure that for example Quality Assurance checks, Insurance, and OV's accreditation is appropriate and current.
- 6 Any performance issues highlighted in the monthly reports will be addressed by the Supplier, who shall be required to provide an improvement plan to address all issues highlighted within a week of receipt of the APHA report.
- 7 APHA will hold meetings with the Supplier to discuss and agree the conduct of the contract. Sample arrangements are set out in Schedule 6: Contract Governance.
- 8 The Authority will hold quarterly Review Meetings with the Supplier to review the Supplier's monthly Performance Management reports and implementation of any improvement plan. The 4<sup>th</sup> Quarter will include an overarching annual Review.
- 9 Performance failure by the Supplier and/or Authority staff will result in administrative costs and lost income to the Authority. Where failure attributable

to the Supplier is identified in the Performance Management report and relates to the KPI's then the service credit regime shall apply.

- 10 Key Performance Indicators (KPIs) are essential in order to align the Supplier's performance with the requirements of the Authority and to do so in a fair and practical way. KPIs have to be realistic and achievable; they also have to be met otherwise indicating that the service is failing to deliver.
- 11 The use of service credits in such a situation will apply, as service failure places strain on the relationship as delivery falls short of agreed levels. The only other recourse would be to terminate and seek alternative supply.
- 12 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 to the Authority.
- 13 The use of service credits is governed by the following principles:
  - i. Service credits sit within the performance management approach utilised by the Authority and are an intrinsic part of ensuring performance is maintained at the agreed service levels.
  - ii. Failure to achieve the performance target of an individual KPI in a given month, where that KPI is identified as being priority 1 and has fallen within 10% of the minimum level required, will result in a formal warning. There will be a requirement to provide an improvement plan to address the failure. Should failure occur in a second month (within 10% of the minimum level required) then a deduction of 2% of total invoice value will be applied for the second month. Subsequent failures on a consecutive basis will increase the deduction by 2% per month on a cumulative basis until the deductions reach 10% of invoice. At this point, this will be considered a material breach of performance and an emergency meeting will be held to discuss performance.
  - iii. Where failure of a KPI identified as priority 1 occurs and is greater than 10% then immediate action to rectify will be required. Failure to do so will result in deductions of 5% of total invoice value in the month of initial failure. Further failure to rectify will be considered a material breach.
  - iv. Failure to achieve the performance target of an individual KPI in a given month, where that KPI is identified as being priority 2 and has fallen within 10% of the minimum level required, this will result in a formal warning. There will be a requirement to provide an improvement plan to address the failure. Should failure occur in a second month (within 10% of the minimum level required) then a deduction of 1% of total invoice value will be applied for second

month. Subsequent failures on a consecutive basis will increase the deduction by 1% per month on a cumulative basis until the deductions reach 5% of invoice value. At this point, this will be considered a material breach of performance and an emergency meeting will be held to discuss performance.

- v. Where failure of a KPI identified as priority 2 occurs and is greater than 10% then immediate action to rectify will be required. Failure to do so will result in deductions of 3% of total invoice value in the month of initial failure. Further failure to rectify will attract a further deduction of 2% per month up to 9% at which point this will be considered a material breach.
- vi. Achieving the KPI identified as a priority 2 within the next month renders that service failure resolved.
- vii. Should a failure in respect of a priority 1 KPI under paragraphs ii) to iii) above recur within 3 months or recur more than once non sequentially within the subsequent 6 months from the original failure then deductions will be applied as if the failure has been concurrent.
- viii. Where multiple KPIs are failed then the deductions will be cumulative until they reach 10% of invoice value. At this point, this will be considered a material breach of performance and an emergency meeting will be held to discuss performance.
- ix. The Authority has full and complete discretion on whether to claim all, part or none of a service credit to which it is due.
- x. Service credits claimed will be paid to the Authority as a credit note within a month following the date at which the service credits fell due.
- xi. The full, agreed service credit regime will operate from the service start date until the end of the Contract.
- xii. APHA reserve the right to apply for contractual damages as alternative to seeking Service Credits in accordance with clause F12.2 of the Contract.

## Key Performance Indicators - KPI's

Percentages are the minimum levels of performance required on a monthly basis in the year following the date

KPI No	KPI Category (main)	Description	April 2015	April 2016	April 2017	Data source	System	Priority
1	2	Service A: TB test results for cattle, where Reactors / Inconclusive Reactors are disclosed, are submitted on Sam within 1 working day of the TT2 date.	95%	97%	100%	Sam	APHA Business Objects	1
2	2	Service A: Clear TB test results for cattle are submitted on Sam within 5 working days of the TT2 date.	95%	97%	100%	Sam	AHVLLA Business Objects	1
3	3	Services A-C: Supplier OV work is carried out by OV's qualified and authorised by APHA to carry-out the tests or tasks allocated to them.	100%	100%	100%	APHA & Supplier Records	Manual	1
4	2	Services A-C: All data input and submitted on Sam are accurate.	100%	100%	100%	Sam	Manual	1
5	2	Service B: Task data must be submitted on Sam within 1 working day of the completion date.	100%	100%	100%	Sam	APHA Business Objects	2
6	2	Service B: Work instructions are completed with any required reporting of results by the due date.	100%	100%	100%	Sam	APHA Business Objects	1
7	4	Services A-C: Supplier's reconciled invoice is to be delivered to APHA within 10 working days of month end.	100%	100%	100%	Oracle/Sam	Manual	2
8	3	Service B: Every OV undertaking TB testing is subject to a field audit of their performance of the test at least once every 24 months. Note 1	50%	100%	100%	Supplier Records	Manual	1

9	1	Services A&B: Supplier's monthly report of Quality Assurance Audit to be delivered to APHA within 10 working days of the month end.	100%	100%	100%	Supplier Records	Manual	2
10	5	Service A: Completion of mini-surveys to determine degree of satisfaction of the service to the keeper – agreed to look at this for the second year and to discuss at best practise meetings with suppliers						2
11	3	Service A: To establish through field audit a baseline of non-compliance data and statistics for the first year of the contract. Thereafter to establish targets for improvement and to report progress against these targets in subsequent years of the contract. Details to be agreed with the Authority in the light of the baseline findings for each lot.						2

Note 1. The percentage for KPI 8 is that required by end of year; monthly data should demonstrate acceptable progress towards the end of year target.



Note 2. The KPI's will be agreed and finalised during the Transition Period. Once the KPI's have been agreed, these will be confirmed under a Change Control Note.

## Schedule 6 - CONTRACT GOVERNANCE

### Governance Boards

LEVEL	ATTENDEES	Agenda items	LOCATION/TIMINGS
<p><b>Level 3</b></p> <p><b>Regional performance</b></p> <p><b>(Day to Day)</b></p>	<p><b>Authority attendees:</b></p> <ul style="list-style-type: none"> <li>Regional Operations Director</li> <li>Regional performance manager</li> </ul> <p><b>Supplier</b> [ Supplier Key Representatives, please insert here]</p> <p><b>Optional</b> invitees if required.</p>	<ul style="list-style-type: none"> <li>Escalation issues</li> <li>KPIs</li> <li>Quality assurance</li> <li>Risks and issues</li> <li>Financial performance/MI.</li> </ul>	<p>Monthly (or as appropriate)</p> <p>Regional office (APHA or suppliers)</p> <p>Face to face</p>
<p><b>Level 2</b></p> <p><b>Regional Service performance</b></p>	<p><b>Authority Attendees:</b></p> <ul style="list-style-type: none"> <li>National Veterinary Delivery Partnership Manager</li> <li>Regional Director (APHA)</li> <li>Performance Manager</li> <li>Network Procurement Category/Relationship Manager</li> </ul> <p><b>Supplier Representative:</b></p> <p>[ Supplier to insert description of the lead person]</p> <p>Optional invitees if required</p>	<ul style="list-style-type: none"> <li>Workload planning</li> <li>Continuous improvement.</li> <li>KPI's</li> <li>Financial performance/MI.</li> <li>Quality assurance</li> <li>Issues and risks</li> <li>Escalations</li> </ul>	<p>Quarterly:</p> <p>Regional Office:</p> <p>Face to face.</p>
<p><b>Level 1: Senior Management review</b></p>	<p><b>Authority Attendees:</b></p> <ul style="list-style-type: none"> <li>Service Delivery Director APHA</li> <li>Deputy Head of FCS/PCF</li> <li>FCS/PCF Category/Relationship Manager (optional).</li> </ul>	<ul style="list-style-type: none"> <li>KPI's</li> <li>Strategic direction</li> <li>Relationship direction</li> <li>Efficiencies</li> <li>Quality</li> </ul>	<p>Annual performance review:</p> <p>Formal pre-arranged. Face to face.</p> <p>Location will be APHA offices dependent on Regional location.</p>

	<ul style="list-style-type: none"> <li>National VDP Manager</li> </ul> <p><b>Supplier Attendees:</b> [ Supplier to insert description of the most Senior Decision maker]</p> <p>Optional invitees if required.</p>	<ul style="list-style-type: none"> <li>Future workload planning.</li> <li>Risk management</li> </ul>	
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## **SCHEDULE 7- EXIT MANAGEMENT**

### **1. General**

- 1.1. The Supplier is required to ensure the orderly transition of the Services from the Supplier to the Authority and/or a Replacement Supplier in the event of termination (including partial termination) or the expiry of this Contract. This Schedule sets out the principles of the exit and service transfer arrangements that are intended to achieve such orderly transition and which shall form the basis of the exit plan. For the avoidance of doubt, the Supplier shall be responsible for the overall management of the exit and service transfer arrangements.
- 1.2. The provision of this schedule shall apply both to the termination or expiry of the Contract as a whole (however arising) and also to each and every partial termination (if any), save as expressly stated otherwise in this schedule.

### **2. Exit Plan**

- 2.1. Each party will appoint an Exit Manager and provide written notification of such appointment to the other party within three (3) months of the Commencement Date. The Supplier's Exit Manager will be responsible for ensuring that the Supplier, its Staff and any Sub-Contractors will comply with this schedule. The Supplier will ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this schedule. The parties' Exit Managers will liaise with one another in the relation to all issues relevant to the termination of this Contract and all matters connected with this schedule and each party's compliance with it.
- 2.2. The Supplier will, at least three (3) months before the Expiry Date or Termination Date, deliver to the Authority an Exit Plan which sets out the Supplier's proposed methodology for achieving an orderly transition of Services from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination of this Contract and which complies with the requirements set out in Clause 2.3 below. Within thirty (30) days after the submission of the Exit Plan, the parties will use their respective reasonable endeavours to agree the contents of the Exit Plan. If the parties are unable to agree the contents of the Exit Plan then such dispute shall be resolved in accordance with schedule 6 (Dispute Resolution Procedure).
- 2.3. The Exit Plan will contain, as a minimum:
  - 2.3.1. The management structure to be employed during both transfer and cessation of the Services; and
  - 2.3.2. a detailed description of both the transfer and cessation processes, including timetable and details of how the Supplier will ensure that the

Service will be transferred effectively, efficiently and in an orderly manner that will enable the Authority and the Replacement Supplier to continue with the Service from the Transfer Date in a manner and form that is mutually agreed.

- 2.4. The Supplier will review and (if appropriate) update the Exit Plan in the first month of each Contract Year (commencing with the Second Contract Year) to reflect any changes to the Services. Following such update the Supplier will submit the revised Exit Plan to the Authority for review. Within thirty (30) days following the submission of the revised Exit Plan, the parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan, based on the principles set out in this schedule and the changes that have occurred in the Services since the Exit Plan was last agreed. If the parties are unable to agree the contents of the revised Exit Plan within that thirty (30) day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 2.5. Within thirty (30) days after the service of a notice of termination by either party and no less than six (6) months prior to the Expiry Date, the Supplier shall submit for the Authority's approval the Exit Plan in a final form that can be implemented immediately.
- 2.6. The parties will meet and use their respective reasonable endeavours to agree the contents of the final Exit Plan. If the parties are unable to agree the contents of the Exit Plan within thirty (30) days following its delivery to the Authority then such dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final Exit Plan, the Supplier shall continue to provide the Services in accordance with the Contract.

### **3. CO-OPERATION AND ASSISTANCE**

- 3.1. Subject to clause 3.6, during the Termination Assistance Period the Supplier shall provide the Authority and/or Replacement Supplier reasonable co-operation in connection with the transfer of responsibility for the Services and so as to assist the Authority to resume the operation of Services.
- 3.2. For the purpose of this paragraph 3, the meaning of the term 'reasonable co-operation' shall include:
  - liaising with the Authority and/or a Replacement Supplier, and providing reasonable assistance and advice concerning the Services and the transfer of the responsibility for their performance to the Authority or to such Replacement Supplier;
  - If required the Supplier will afford access for any Replacement Supplier at reasonable times and on reasonable advance written notice to the Premises where any Services are performed or provided only to the extent relevant and necessary for the purposes of taking over the Services; and

3.3. During the Termination Assistance Period the Supplier shall provide to the Authority or, if requested by the Authority, any Replacement Supplier:

- (a) in accordance with clause H7 of the Contract, all information the Supplier has in its possession or control or is able to produce relating to the Services that is reasonably necessary to enable the Authority or a Replacement Supplier to take over the provision of the Services.
- (b) up to date copies of all Authority Data;
- (c) any reasonable assistance, expertise and advice requested by the Authority in connection with any proposed or envisaged transfer of Services or to facilitate the transfer of Services to the Authority or a Replacement Supplier; and
- (d) all reasonable assistance in connection with its preparation of any request for proposal or other similar to some or all of the Services,

3.4. The Supplier shall be entitled to charge for the additional services provided under paragraph 3.3 (c) and (d) on a time and materials basis by prior written agreement with the Authority. However, the Supplier shall comply with paragraph 3.3 (a) and (b) at no additional charge to the Authority.

3.5. For avoidance of doubt the Supplier will, unless otherwise agreed in writing between the parties, continue to provide the Service under this Contract throughout the Termination Assistance Period and any extension thereof pursuant to paragraph 3.1, at no detriment to the Service Levels.

3.6. Without prejudice to the Supplier's obligations under paragraph 3.1 and subject to the terms of Clause 9 (Term and Termination) of the Contract, in consideration of the continued payment by the Authority of the Charges in accordance with the relevant provisions of the Contract, the Supplier shall continue to provide such Services as the Authority shall request from time to time following termination of this Contract, for as long as it reasonably requested to do so by the Authority and for period not exceeding the Termination Assistance Period (unless otherwise agreed by the parties).

3.7. The Supplier shall not be held liable or responsible for any damage, loss or defect arising as a direct result of any act or omission by the Authority or any Replacement Supplier appointed by the Authority in the provision of this Service.

3.8. The Supplier shall be under no obligation to retain those Staff engaged to provide the Services beyond the Termination Assistance Period save where the Authority has requested such assistance pursuant to paragraph 3.5.

#### **4 TERMINATION OBLIGATIONS**

- 4.1 The Supplier shall comply with all of its obligations contained within the Exit Plan.
- 4.2 The Supplier will use all reasonable endeavours to ensure that the transfer of Authority Data will not disrupt or inconvenience the Authority.
- 4.3 Upon the Expiry Date or the Termination Date (or earlier if this does not adversely affect the Supplier's performance of the Services and its compliance with the other provisions of this schedule);
- the Supplier will erase from any computers, storage devices and storage media all Authority Data;
  - the Supplier will deliver to the Authority all materials created by the Supplier under this Contract including the Intellectual Property Rights in which are owned by the Authority;
  - each party will return to the other party all Confidential Information of the other party and will certify that it does not retain the other party's Confidential Information save to the extent (and for a limited period) that such information needs to be retained by the party in question for the purposes of providing or receiving any Services.

## SCHEDULE 8 - STAFF TRANSFER

### Staff Transfer

#### 1. DEFINITIONS

In this Schedule, terms not defined in the Contract shall have the following definitions:

**“Admission Agreement”** The agreement to be entered into by which the Supplier agrees to participate in the Schemes as amended from time to time;

**“Supplier's Final Personnel List”** : provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

**“Supplier Personnel”** all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under this Agreement;

**“Supplier's Provisional Personnel List”** a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

**“Fair Deal Employees”** those Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;

**“Former Supplier”** a Supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such Supplier (or any sub-contractor of any such sub-contractor);

**“New Fair Deal”** the revised Fair Deal position set out in the HM Treasury guidance: *“Fair Deal for staff pensions: staff*

*transfer from central government*" issued in October 2013;

<b>"Notified Contractor"</b>	<b>Sub-</b>	a Sub-Contractor identified in the Annex to this Schedule to whom Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
<b>"Replacement Contractor"</b>	<b>Sub-</b>	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
<b>"Relevant Transfer"</b>		a transfer of employment to which the Employment Regulations applies;
<b>"Relevant Transfer Date"</b>	<b>Transfer</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>"Schemes"</b>		the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);
<b>"Service Transfer"</b>		any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
<b>"Service Transfer Date"</b>	<b>Transfer</b>	the date of a Service Transfer;
<b>"Staffing Information"</b>		in relation to all persons identified on the Supplier's Provisional Personnel List or Supplier's Final Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:  (a) their ages, dates of commencement of employment or engagement and gender;  (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;

- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

**“Transferring Former Supplier Employees”** in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and

**“Transferring Supplier Employees”** those employees of the Supplier and/or the Supplier’s Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.

## 2. **INTERPRETATION**

Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that

each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-Contractor, as the case may be.

## **PART A: Transferring Former Supplier Employees at commencement of Services**

### **1 RELEVANT TRANSFERS**

1.1 The Authority and the Supplier agree that:

- (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees (if any); and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-Contractor and each such Transferring Former Supplier Employee.

1.2 The Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

### **2 FORMER SUPPLIER INDEMNITIES**

2.1 Subject to Paragraph 2.2, the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by the Former Supplier arising before the Relevant Transfer Date;
- (b) the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:

- (i) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
- (c) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- (d) a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (f) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before,

on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Supplier and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and
- (b) the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the fifteen (15) Working Day period specified in Paragraph 2.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- (a) shall not apply to:
    - (i) any claim for:
      - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
    - (ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
  - (b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within six (6) months of the Effective Date.
- 2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

### **3 SUPPLIER INDEMNITIES AND OBLIGATIONS**

- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by the Supplier or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
  - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Supplier or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Supplier or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the

Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

- (g) a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and
- (h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

#### **4 INFORMATION**

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall use reasonable endeavours to procure that the Former Supplier shall promptly

provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

## **5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - (d) the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

## **6 PROCUREMENT OBLIGATIONS**

- 6.1 Notwithstanding any other provisions of this Part A, where in this Part A the Authority accepts an obligation to procure that a Former Supplier does or does not do something ("Obligation to Procure"), such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce ("Authority Enforcement Right"), or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.
- 6.2 Where the Authority has an Authority Enforcement Right against a Former Supplier, the benefit of which is capable of being assigned to the Supplier, the Authority shall have the option of assigning such Authority Enforcement Rights (as an alternative to enforcing such rights) in which case the Authority will be deemed to have complied with its Obligations to Procure under this Part A.

## **7 PENSIONS**

The Supplier shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Annex in respect of any Transferring Former Supplier Employees who transfer from the Former Supplier to the Supplier.

## **PART A Annex: PENSIONS**

### **1 PARTICIPATION**

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Authority undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees.
- 1.3 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

### **2 FUTURE SERVICE BENEFITS**

- 2.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### **3 FUNDING**

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

#### **4 PROVISION OF INFORMATION**

The Supplier and the Authority respectively undertake to each other:

- (a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- (b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

#### **5 INDEMNITY**

The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

#### **6 EMPLOYER OBLIGATION**

The Supplier shall comply with the requirements of [Part 1 of] the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

#### **7 SUBSEQUENT TRANSFERS**

The Supplier shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- (b) provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of

accrued rights required as part of participation under the New Fair Deal; and

- (c) for the period either
  - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or
  - (ii) after the date which is two (2) years prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

**PART B: Not Used**

## **PART C: EMPLOYMENT EXIT PROVISIONS**

### **1 PRE-SERVICE TRANSFER OBLIGATIONS**

- 1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:
- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
  - (b) receipt of the giving of notice of early termination or any partial termination of this Agreement;
  - (c) the date which is twelve (12) months before the end of the Term; and
  - (d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),
- it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Personnel List and it shall provide an updated Supplier's Provisional Personnel List at such intervals as are reasonably requested by the Authority.
- 1.2 At least Twenty (20) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-Contractor:
- (a) the Supplier's Final Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
  - (b) the Staffing Information in relation to the Supplier's Final Personnel List (insofar as such information has not previously been provided).
- 1.3 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.
- 1.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- (b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or relevant Sub-Contractor or received from any persons listed on the Supplier's Provisional Personnel List regardless of when such notice takes effect.

1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services; and
- (c) a description of the nature of the work undertaken by each employee by location.

1.7 The Supplier shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service

Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Supplier's Final Personnel List who is a Transferring Supplier Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

## **2 EMPLOYMENT REGULATIONS EXIT PROVISIONS**

2.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the Supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.

2.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and

outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.

2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission of the Supplier or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;
- (b) the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
  - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand

by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

- (e) a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date); or
- (b) arising from the Replacement Supplier's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.

2.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
  - (b) the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5(b) has elapsed:
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved
- the Authority shall advise the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- (a) shall not apply to:
    - (i) any claim for:
      - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

- (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
      - in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor; or
    - (ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
  - (b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) months of the Service Transfer Date.
- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-Contractor shall comply with such obligations as may be imposed upon it under applicable Law.
- 2.11 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Supplier and/or any Sub-Contractor; and
  - (b) the Replacement Supplier and/or the Replacement Sub-Contractor.
- 2.12 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-Contractor, shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

- 2.13 Subject to Paragraph 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:
- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor;
  - (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
    - (ii) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;
  - (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
  - (d) any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
  - (e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
  - (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;

- (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-Contractor, to the Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.

2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

### **3 PROCUREMENT OBLIGATIONS**

- 3.1 Notwithstanding any other provisions of this Part C, where in this Part C the Authority accepts an obligation to procure that a Replacement Supplier does or does not do something (“Obligation to Procure”), such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Replacement Supplier contains a contractual right in that regard which the Authority may enforce (“Authority Enforcement Right”), or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Replacement Supplier does or does not act accordingly.
- 3.2 Where the Authority has an Authority Enforcement Right against a Replacement Supplier, the benefit of which is capable of being assigned to the Supplier, the Authority shall have the option of assigning such Authority Enforcement Rights (as an alternative to enforcing such rights) in which case

the Authority will be deemed to have complied with its Obligations to Procure under this Part C.

**SCHEDULE 8 - STAFF TRANSFERS (cont'd)**

**ANNEX**

**LIST OF NOTIFIED SUB-CONTRACTORS**

Not applicable.

## **SCHEDULE 9 - SECURITY POLICY: HMG SECURITY POLICY FRAMEWORK**

A copy of the HMG Security Policy Framework may be found at :  
<http://www.cabinetoffice.gov.uk/intelligence-security-resilience/intelligence-and-protective-security.aspx>

## SCHEDULE 10 – GEOGRAPHICAL LOTS

LOT	REGION	DESCRIPTION (by county)	APHA Region
LOT 1	Wales North	North Powys (Montgomeryshire), Gwynedd, Clwyd	Wales
LOT 2	Wales South	South Powys (Breconshire and Radnorshire), Ceredigion, Pembrokeshire, Carmarthenshire, South Glamorgan, Mid Glamorgan, West Glamorgan, Gwent	Wales
LOT 3	South West 1	Cornwall, Devonshire, Isles of Scilly	South West
LOT 4	South West 2	Dorset, Gloucestershire, Avon, Somerset, Wiltshire	South West
LOT 5	South East	Bedfordshire, Berkshire, Buckinghamshire, Cambridgeshire, Essex, Hampshire, Isle of Wight, Hertfordshire, Kent, Greater London-East, Greater London, Norfolk, Oxfordshire, Suffolk, Surrey, East Sussex, West Sussex	South East
LOT 6	Midlands	Derbyshire, Herefordshire, Worcestershire, Leicestershire, Lincolnshire, Northamptonshire, Nottinghamshire, Shropshire, Staffordshire, Warwickshire, West Midlands	Midlands
LOT 7	North	Cleveland, Cheshire, Cumbria, Durham, Lancashire, Merseyside, Tyne & Wear, Northumberland, Greater Manchester, South Yorkshire, North Yorkshire, West Yorkshire, North Yorkshire, Humberside	North

## SCHEDULE 11 - OCQ(V) MODULES

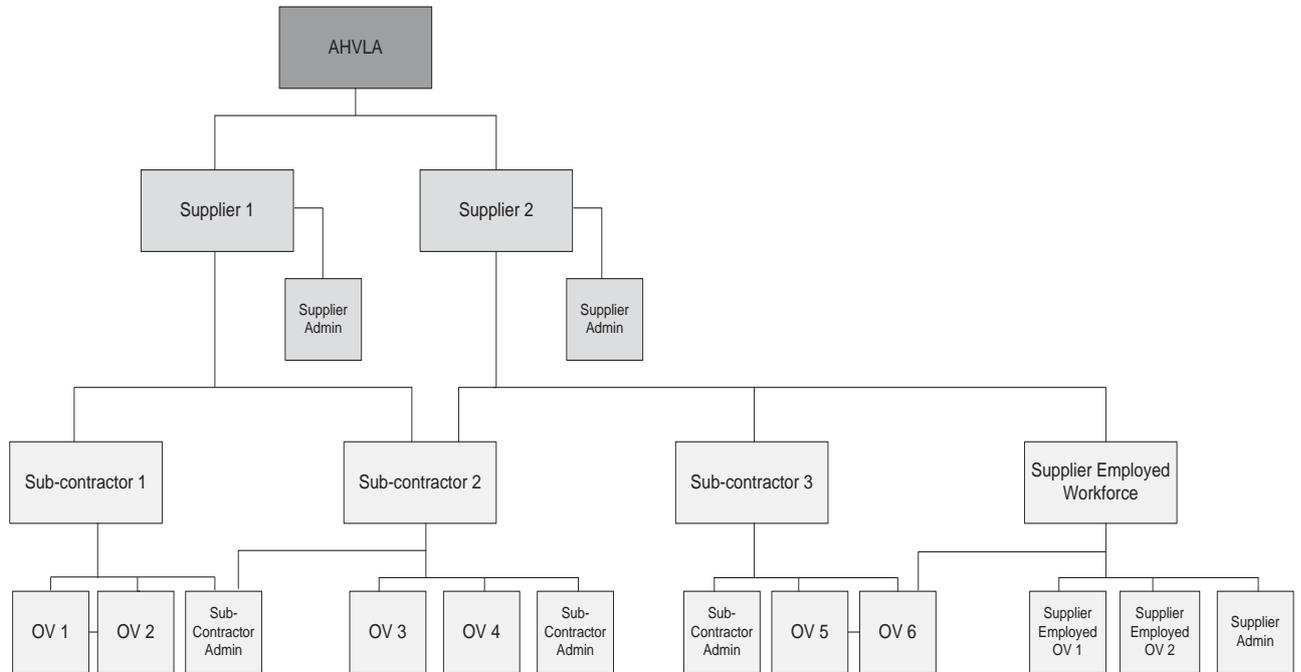
OCQ(V)		High Level Summary of Subject Content
OCQ(V) – ES	Essential Skills	Basics of state veterinary medicine, working with APHA, regulation and statutory control of animal diseases and animal welfare, principles of certification, avoidance of conflicts of interest, communication, health and safety etc. A prerequisite for any other module (with the exception on OCQ(V) – CA).
OCQ(V) – TT	Tuberculin Testing	Tuberculin testing of cattle and other species.
OCQ(V) – SS	Statutory Surveillance	Statutory surveillance activities for 'endemic' diseases other than bTB; currently Brucellosis and Anthrax testing but others may be added
OCQ(V) – EX	Exports, General	General principles of international trade, export procedures and export certification, a foundation for the following export modules. This alone may be sufficient for certain exports for which no further training is required (e.g. insects, live fish etc)
OCQ(V) – SX	Small Animal Exports	Exports of companion animals including PETS and pet birds Incorporating commercial exports of small animals, including export of small zoo and laboratory animals
OCQ(V) – UX	Ungulate Exports	Exports of ungulates including equidae
OCQ(V) – AX	Avian Exports	Export of poultry including Poultry Health Scheme and captive birds which are not pets
OCQ(V) – PX	Product Exports	Export of products of animal origin including food for human consumption and animal by-products
OCQ(V) – GX	Germplasm Exports	Exports of germplasm including supervision of AI centres
OCQ(V) - CA	Companion Animals	*A separate self- contained module specifically designed for companion animal vets with minimal reference to production animal issues. No requirement to undertake OCQ(V) – ES and OCQ(V) – EX
<b>Potential Future OCQ(V)s:</b>		
OCQ(V) - TP	TB Plus	TB plus. Advanced knowledge of bTB biology and control measures
OCQ(V) - TC	Cymorth TB	Cymorth TB. Specific knowledge to improve the support given to farmers in helping to reduce the risk of TB and develop best practice for the case management of TB breakdowns in Wales.

## **SCHEDULE 12 - USE OF THE APHA 'Sam' COMPUTER SYSTEM**

1. APHA will use a browser-based system (known as Sam) to commission tuberculin tests and Other Services, The Suppliers' direct employees, Sub-Contractors and Sub-Contractors workforce will be provided access to elements of Sam via a Government Gateway managed web portal. This will facilitate the management of the tests and services, also the mandatory electronic submission of results or records on work completion.
2. The commissioning of individual tests and services will be allocated to a virtual 'workbasket' in Sam to which the Supplier's administrative employees will have access.
3. The Supplier's administrative employees will have functionality allowing them to assign and reassign activities to the 'workbasket' of an associated subcontracted business or to a member of a Sub-Contractors OV workforce, or to an OV directly employed by the supplier.
4. The Sub-Contractor's workforce (veterinary and administrative) will have functionality allowing them to manage activities internally within their organisation, or to return activities to the Supplier. Sub-Contractors will not have visibility of the Supplier's workbaskets nor of the assignment of activities across the Supplier's network of Sub-Contractors.
5. System permissions will mandate that administrative staff and OV's can complete data entry in relation to tuberculin tests and Other Services. All can submit the records of work completion for Other Services; however, the tuberculin test results, once the data entry is complete, can only be submitted by the OV.
6. The supplier will be provided with functionality allowing them to export by file, filtered views of data such as their workbasket for purposes of off-system work management. In addition the supplier will be able to view and export detailed historical tuberculin test data and high level data on other services for work for which they were responsible.
7. In addition to the mandatory reporting of test submission and/or work completion on Sam, some other services will require that off-system procedures are followed in unison to provide APHA with additional information, such as the completion of paper based forms detailing Other Services test results.
8. It is the Suppliers responsibility to ensure they and their Sub-Contractors use compatible Information Technology. Sam is currently compatible with:
  - Internet Explorer 8 (32-bit)
  - Internet Explorer 9 (32-bit)
  - Windows 7

- Microsoft Office 2010
- Microsoft Office 2007
- Microsoft Office 2003

**The hierarchy and relationship model for Sam**



## **SCHEDULE 13 – SUPPLIER’S COMMITTED OV WORKFORCE**

The Supplier has committed the following OV Workforce:

**Table 1: Committed OV Workforce**

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**Table 2: Emergency Response Workforce**

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## SCHEDULE 14 - LIST OF EQUIPMENT TO BE SUPPLIED BY THE SUPPLIER

The Supplier is required to ensure that the equipment is available in sufficient quantities, making certain that all items are within their shelf life.

Note: The [PPE at Work Regulations 1992](#) came into force on 1 January 1993, and cover all equipment (including clothing affording protection against the weather) intended to be used for protection against any risks to Health and Safety (H&S).

ITEM	NOTES
Waterproof jacket and trousers	Suitable for cleansing and disinfecting.
Wellington boots	Suitable for cleansing and disinfecting. For on farm use
Disposable boiler suit (s) with hoods	Disposable boiler suits should not be re-used after a farm visit. (non-disposable boiler suits or lab coat should not be used unless authorised)
Respiratory protection [minimum FFP3 disposable masks].	Appropriate to the risk faced and also best fit. APHA may provide specialist RPE in an Outbreak or Incident.
Hard hat	White coloured if to be used in abattoir as well as elsewhere.
First Aid Kit inc. eye wash	
Gloves (surgical disposable)	Check correct size
Gloves (heavy duty, re-usable)	Check correct size
Clinical waste bags	For equipment that cannot be cleansed on site.
Approved <a href="#">Disinfectant</a>	Suitable for use on entry, during and leaving premises. Must be stored, carried and used in accordance with H&S requirements.
Bucket, brush, hoof pick, sponge for PPE	Suitable for cleansing and disinfecting.
Container for use as foot bath	Eg. tote box or similar.

ITEM	NOTES
Water container	Min. 5 litres
Paper towels	
Liquid soap	
Mobile phone and spare battery/charger	Suitable for cleansing and disinfecting.
Pen, pencil and notebook	Waterproof Aquascribe notebook if possible
Thermometers	
Stethoscope	
Torch and Batteries	

## SCHEDULE 15 – APHA GENERIC RISK ASSESSMENT - WORKING WITH ANIMALS

 <b>RISK ASSESSMENT</b>	<b>Activity</b>	<b>Working with Animals</b> <i>e.g. Cattle, Sheep/Camelids , Pigs, Goats, Poultry, Horses, Dog, Cats and Exotics.</i>		<b>RA</b> <b>2</b>	
	This generic Risk Assessment has been amended to apply to this location:				
	<b>Date of this assessment</b>	<b>October 2013</b>	<b>1<sup>1</sup>GENERIC</b>	<b>Undertaken by</b>	<b>SHAW Team</b>
	<b>Date of next assessment<sup>2</sup></b>	<b>12 months</b>			

This Risk Assessment (RA) or COSHH Assessment (CRA) informs on generic controls and applies to field work on non-APHA premises. You may also need to assess risks specific or unique to the premises you visit and respond accordingly.

If you have concerns on your competence to work in these environments, discuss them with your manager and seek training. Individual training records must be maintained.

You should comply with premises own safety standards unless they compromise the controls advised in this assessment.

This RA must be read in conjunction with RA and Risk Guidance (RG) 1 and the accompanying RG2 for supplementary information on applying the standards advised.

SIGNIFICANT HAZARDS IDENTIFIED	WHO MIGHT BE HARMED?	IS RISK ADEQUATELY CONTROLLED?
	Persons at Risk and Level High (H) Medium (M) Low (L)	Model Controls  Are model controls implemented? Yes / No <sup>3</sup>
	Field      Admin      Other	

<sup>1</sup> Insert the location (e.g. APHA office) to which this assessment relates

<sup>2</sup> Reassessment should be within 12 months, or sooner should any major changes occur

<sup>3</sup> If 'No' complete Defects Report Form

SIGNIFICANT HAZARDS IDENTIFIED	WHO MIGHT BE HARMED?			IS RISK ADEQUATELY CONTROLLED?	Are model controls implemented? Yes / No <sup>3</sup>
	Persons at Risk and Level High (H) Medium (M) Low (L)	Admin	Other		
<p><b>1. Farm Animals</b></p> <p><b>a) poor awareness of species behaviours</b> leading to incidents and injuries caused by a lack of preparation and the heightened behaviours of animals.</p> <p><b>b) unsuitable restraint, equipment or manpower</b> leading to crush, broken bones, cuts, bruising, back strain, scratches, bites and kicks etc.</p>	M		M	<p>Behaviours and suitable restraint methods are species specific. You must have suitable knowledge of the behaviours and reactions of animals you work with and refer training needs to your manager.</p> <p>APHA must not routinely take responsibility for gathering, catching and the restraint of the animals.</p> <p>Facilities appropriate to the species and age/size of stock must be used; particularly if animals are unhandled or fractious.</p> <p>Large entire male animals must be separated from groups and suitably restrained for our work.</p> <p>Farm handling equipment involved in our work must be assessed as fit for purpose and in sound working order. You should be aware of all functionality before starting work or using any part.</p> <p>Suitable and sufficient manpower must be provided by owners for the purpose of our work.</p> <p>Do not work in restricting spaces and always have a suitable escape route available.</p> <p>See <b>HS32</b> for controls to be applied to all work with bovines by</p>	
	H		H		

SIGNIFICANT HAZARDS IDENTIFIED	WHO MIGHT BE HARMED?			IS RISK ADEQUATELY CONTROLLED?	Are model controls implemented? Yes / No <sup>3</sup>
	Persons at Risk and Level High (H) Medium (M) Low (L)	Admin	Other		
	Field			<p>Model Controls</p> <p>staff on non-APHA premises, which includes the following mandatory standards and controls:</p> <ul style="list-style-type: none"> <li>• Training for all new field staff who work with cattle,</li> <li>• Contacting owners in advance of work in identified situations,</li> <li>• Completing a dynamic risk assessment on farm before work,</li> <li>• Restrictions to our role in presenting stock and the application of restraints, and</li> </ul> <p>See HS13 for guidance on the handling each of other (non-bovine) species.</p>	
<p><b>2. Exotic Species:</b></p> <p>a) known or suspected to have toxic or irritant potential, and</p> <p>b) other dangerous and wild</p>	H		H	<p>You are not routinely required to work in direct contact with such hazards.</p> <p>Wildlife Licensing and Registration Service (WLRs) Inspectors are the exception to the rule and may be required to come into contact with Convention on International Trade in Endangered Species (CITES) species and derivative materials that present a risk of toxic, physical or irritant harm e.g. wild or aggressive species, toxic snakes/insects/ amphibians, corals, fish and</p>	

SIGNIFICANT HAZARDS IDENTIFIED	WHO MIGHT BE HARMED?		IS RISK ADEQUATELY CONTROLLED?	Are model controls implemented? Yes / No <sup>3</sup>
	Level High (H) Medium (M) Low (L)	Field Admin Other		
animals that have the potential to cause injury (i.e. bites, scratch or physical force).			<p>Model Controls</p> <p>some plants.</p> <p>In allocating WLRs inspections, work involving high risk species will be done by Heathrow Animal Reception Centre staff contracted to the WLRs as species competent, suitably equipped and have access to anti venom as applicable.</p> <p>WLRs inspectors investigating a:</p> <ul style="list-style-type: none"> <li>• dangerous or wild species, or</li> <li>• species/material with direct toxic or irritant potential</li> </ul> <p>must be experienced in the species/material to be inspected.</p> <p>All such allocated work must be done while accompanied by either the species owner, keeper, agent or a colleague.</p> <p>The species must be suitably and effectively restrained by the owner or agent of the species who has a responsibility for presenting them safely for our work.</p> <p>Where indirect contact or handling of the species is necessary by an inspector it must be carefully assessed for the physical restraint controls necessary and applied before work is</p>	

SIGNIFICANT HAZARDS IDENTIFIED	WHO MIGHT BE HARMED?			IS RISK ADEQUATELY CONTROLLED?	Are model controls implemented? Yes / No <sup>3</sup>
	Persons at Risk and Level High (H) Medium (M) Low (L)	Admin	Other		
	Field			<p>attempted.</p> <p>WLRs inspectors must not attempt to restrain the species and must not attempt any work or contact until suitable and effective physical restraint or control has been applied.</p> <p>Others dedicated to working in port, airport and quarantine premises may also indirectly be presented with exotic species, and should see <b>RA and RG6</b> for the relevant safety standards and practice.</p>	
3. Hazardous Substances - biological agents causing infections and zoonoses.	M		M	<p>It is <b>mandatory</b> for all field staff to wear the following PPE for all work on all premises:</p> <ul style="list-style-type: none"> <li>• <b>coverall</b> over clothing, and</li> <li>• <b>disinfectable footwear</b></li> <li>• <b>disposable gloves</b> for any contact with any species or where there is any potential for contact with risk materials contaminated by animal faeces, blood, urine, other vaginal discharge, saliva, pus or other biological material.</li> </ul> <p>It is recommended that dark coloured coveralls are worn; with</p>	

SIGNIFICANT HAZARDS IDENTIFIED	WHO MIGHT BE HARMED?			IS RISK ADEQUATELY CONTROLLED?	Are model controls implemented? Yes / No <sup>3</sup>
	Persons at Risk and Level High (H) Medium (M) Low (L)	Field	Admin		
				<p><b>Model Controls</b></p> <p>goggles and an FFP3 disposable respirator carried and available for work.</p> <p>An FFP3 disposable respirator and eye protection or fit tested full face RPE must be worn in addition to the above for all work with camelids.</p> <p>Infected or infested animal materials (i.e. any body fluid or materials, feedstuffs offered and bedding material) can present infection risks upon contact.</p> <p>APHA decontamination must be adhered to between premises and good personal hygiene must be practiced during work e.g. no eating, drinking and smoking while working etc.</p> <p>Contact with livestock may also present direct risk or infestation and infections from parasites including:</p> <ul style="list-style-type: none"> <li>• flies/maggots</li> <li>• fungal</li> <li>• lice</li> <li>• fleas</li> </ul>	

SIGNIFICANT HAZARDS IDENTIFIED	WHO MIGHT BE HARMED?			IS RISK ADEQUATELY CONTROLLED?	Are model controls implemented? Yes / No <sup>3</sup>
	Persons at Risk and Level High (H) Medium (M) Low (L)	Field	Admin		
				<p>Model Controls</p> <ul style="list-style-type: none"> <li>• worms</li> <li>• ticks</li> <li>• orf.</li> </ul> <p>Check animals and avoid any visible sites of infestation or infection where practicable. The correct application of the PPE above will minimise contact risks.</p> <p>Contact also presents risks of a zoonotic infection and you should also apply <b>CRA9</b> controls relevant to a zoonotic agent suspected or investigated.</p> <p>Use of any agent labelled as hazardous must be restricted to applications as detailed in manufacture's data sheets.</p> <p>Veterinary medicines must be used by, or under the direct supervision of, a Veterinary Surgeon only and manufacturers' instructions and safety controls applied if not included in an APHA risk assessment.</p> <p>IMMOBILON should not be administered to livestock by any APHA employee in the routine course of our statutory responsibilities.</p>	

SIGNIFICANT HAZARDS IDENTIFIED	WHO MIGHT BE HARMED?			IS RISK ADEQUATELY CONTROLLED?	Are model controls implemented? Yes / No <sup>3</sup>
	Persons at Risk and Level High (H) Medium (M) Low (L)	Admin	Other		
	Field			Model Controls	
				See <b>HS9</b> for dedicated controls on Work and Pregnancy beyond those generic to RA1 and 2.	
<b>4. Animal Sample Collection</b> - needles/blades that may cause self inoculation and consequential infections via stick and cuts.	M		M	Please refer to Animal Sampling <b>RA</b> and <b>RG13</b> for advice on the safe use and transport of all such sharps.  WLRs Inspectors must always deploy a contracted Veterinarian to collect samples from CITES species.	
<b>5. Manual Handling of animals.</b>	M		M	See Animal Handling <b>HS32</b> and <b>HS13</b> for advice on restraint equipment and techniques that minimise the need for manual handling.  Also, <b>RA11</b> for best practice in manual handling.	

The Animal and Plant Health Agency is an Executive Agency of the Department for Environment, Food and Rural Affairs working across Great Britain on behalf of Defra, the Scottish Government and Welsh Government

## SCHEDULE 16 – TRAVEL AND SUBSISTENCE

Note: Travel and Subsistence are payable in respect of Service C (Emergency Response) only.

1. All Travel and Subsistence should be in line with Defra's Travel and Subsistence Policy. Claims should always be supported by valid receipts for audit purposes and must not exceed any of the stated rates below. Should the stated rate be exceeded, Defra reserve the right to reimburse only up to the stated rate.
2. **Rail Travel - All Journeys** – Standard class rail unless a clear business case demonstrating value for money can be presented. This includes international rail journeys by Eurostar and other international and overseas rail operators.

### 3. Mileage Allowance 2013/14

Mileage Allowance	First 10,000 business miles in the tax year	Each business mile over 10,000 in the tax year
Private cars and vans – no public transport rate*	45p	25p
Private cars and vans – public transport rate	25p	25p
Private motor cycles	24p	24p
Passenger supplement	5p	5p
Equipment supplement**	3p	3p
Bicycle	20p	20p

\*NB the 'no public transport rate' for car and van travel can only be claimed where the use of a private vehicle for the journey is essential e.g. on grounds of disability or where there is no practical public transport alternative. If the use of the vehicle is not essential the 'public transport rate' should be claimed.

\*\* Under HMRC rules this expense is taxable.

### 4. UK Subsistence

Location	Rate
London (Bed and Breakfast)	£115
UK Other (Bed and Breakfast)	£75

## **SCHEDULE 17 - APHA PROCEDURAL INSTRUCTIONS (MAY 2014)**

### **TB Test Instruction**



TB Testing  
Instructions 0.1.docx

### **Available Other Service Instruction**

Anthrax  
Brucellosis



Anthrax and  
Brucellosis Instructor

### **TB Test Quality Assurance Instruction, Test Assessment, Auditing Standard Operating Procedure, Corrective Action**



TR292 TB Test QA  
Assessment Form.doc



TR314 TB Test QA  
Assessment Guide.do



TR315 TB Test QA  
Standard Operating



TR387 TB Test QA  
Non-Compliance Proc

**SCHEDULE 18 - CONTRACTORS KEY PERSONNEL, CONTACT DETAILS AND COMMUNICATIONS**

**{DN – Supplier to complete table below as defined in Schedule 1: Specification Schedule}**



**Continuity of SOV Service**

Bravo 20162 Contract Provision of a fully managed service for the delivery of tuberculin testing and the supply of veterinary services to government in England and Wales  
Status Final



## **SCHEDULE 19 - HEALTH AND SAFETY AT WORK POLICY AND STATED COMMITMENTS**

**Supplier's Commitment** - The Supplier is fully committed to meeting its responsibilities under the Health and Safety at Work Act 1974 and all other legislation intended to secure health, safety and welfare at work.

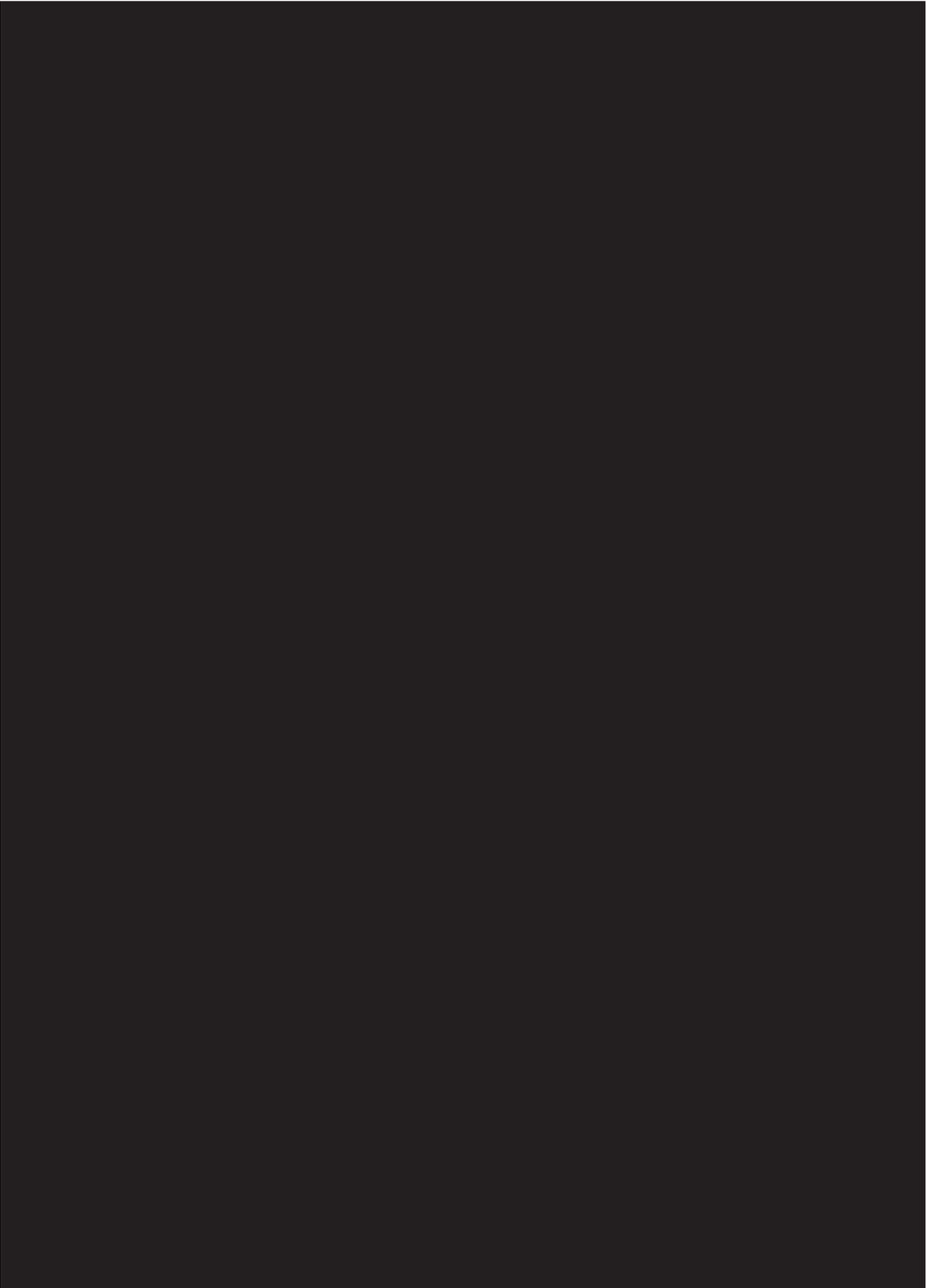
The Supplier recognises and accepts its moral, legal and economic responsibility as an employer for providing a safe and healthy work place and environment for all of its employees.

This responsibility also extends to the protection of others, including employees of other organisations who may be affected by the Supplier's day-to-day working activities and service provision including the Supplier's Sub-Contractors and the animal Keepers.

Through active communications with Keepers the Supplier aims to improve handling facilities on farm and encourage use of contractors where required to improve safety.

These commitments are reflected in all aspects of the Supplier's service delivery, including the day to day activities of;



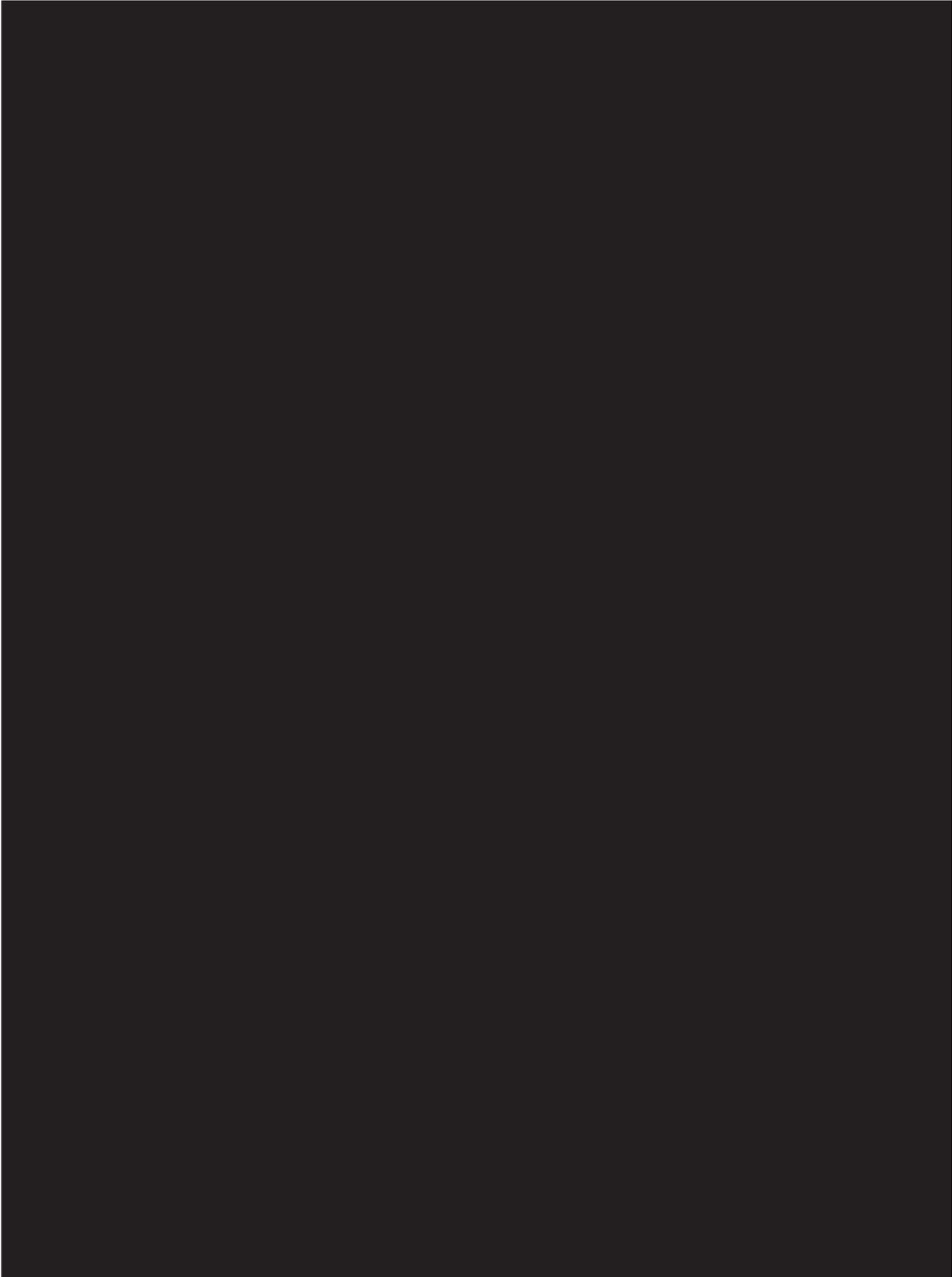














## **SCHEDULE 20 - GUARANTEE**

*[Insert the name of the Guarantor]*

- and -

*[Insert the name of the Beneficiary]*

## **DEED OF GUARANTEE**

## DEED OF GUARANTEE

**THIS DEED OF GUARANTEE** is made the                      day of                      20[ ]

### **BETWEEN:**

- (1) [*Insert the name of the Guarantor*] [a company incorporated in England and Wales with number [                      ] whose registered office is at [*insert details of the Guarantor's registered office here*]] [a company incorporated under the laws of [*insert country*], registered in [*insert country*] with number [*insert number*] at [*insert place of registration*], whose principal office is at [*insert office details*] ("**Guarantor**")]; in favour of
- (2) [*Insert the name of the public sector Party to the Guaranteed Contract*] whose principal office is at [                      ] ("**Beneficiary**")

### **WHEREAS:**

- [(A) It is a condition of the Beneficiary entering into the Guaranteed Contract that the Guarantor executes and delivers this Deed of Guarantee to the Beneficiary.]
- (B) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Contract with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Contract.
- (C) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Contract, the Guarantor hereby agrees with the Beneficiary as follows:

## **2 Definitions and Interpretation**

In this Deed of Guarantee:

- 2.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Contract;
- 2.2 the words and phrases below shall have the following meanings:
  - (a) "**Guaranteed Contract**" means the [*insert details of main contract*] made between the Beneficiary and the Supplier on [*insert date*]; and
  - (b) "**Guaranteed Obligations**" means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Contract together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Contract.

- 2.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Contract) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 2.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 2.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 2.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 2.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 2.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 2.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 2.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 2.11 references to liability are to include any liability whether actual, contingent, present or future.

### **3 Guarantee and indemnity**

- 3.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 3.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Contract or in respect of the Guaranteed Obligations as if it were a primary obligor.

3.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:

(a) fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Contract had been entered into directly by the Guarantor and the Beneficiary; and

(b) as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Contract.

3.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

#### **4 Obligation to enter into a new contract**

If the Guaranteed Contract is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Contract is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Contract and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Contract or under an agreement entered into on the same terms and at the same time as the Guaranteed Contract with the Beneficiary.

## 5 Demands and Notices

5.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

(a) ***[Address of the Guarantor in England and Wales]***

(b) ***[Facsimile Number]***

(c) For the Attention of [***insert details***]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

5.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

(a) if delivered by hand, at the time of delivery; or

(b) if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or

(c) if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

5.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

5.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

## 6 Beneficiary's protections

6.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Contract or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

- 6.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- (a) it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
  - (b) it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
  - (c) if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
  - (d) the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 6.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 6.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 6.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 6.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then

only for the purpose and upon the terms and conditions, if any, on which it is given.

- 6.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

## 7 Guarantor intent

Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Contract and any associated fees, costs and/or expenses.

## 8 Rights of subrogation

The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

- 8.1 of subrogation and indemnity;
- 8.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
- 8.3 to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights up to such amount as the Beneficiary determines in its sole discretion represents the amount of the Guarantor's liabilities under this Deed of Guarantee (the "**Guarantee Estimate Amount**") on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor may retain for its own account or otherwise deal with any such amounts recovered in excess of the Guarantee Estimate Amount as the Guarantor may determine in its sole discretion. The Guarantor hereby confirms that it has not taken any security from the Supplier (other than cross-indemnities or other security taken in the ordinary course of its financial arrangements with its Affiliates) and agrees not to do take any further security until Beneficiary receives all moneys

payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

## **9 Deferral of rights**

- 9.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Contract have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:
- (a) claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Contract; or
  - (b) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Contract or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Contract.
- 9.2 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Contract have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not following the occurrence of a Financial Distress Event or Supplier Termination Event:
- (a) exercise any rights it may have to be indemnified by the Supplier;
  - (b) demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
  - (c) claim any set-off or counterclaim against the Supplier.
- 9.3 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

## **10 Representations and warranties**

The Guarantor hereby represents and warrants to the Beneficiary that:

- 10.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- 10.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;

- 10.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
- (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
  - (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
  - (c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- 10.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 10.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

## **11 Payments and set-off**

- 11.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 11.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 11.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

## **12 Guarantor's acknowledgement**

- 11.1 The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or

implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

### **13 Assignment**

- 13.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.
- 13.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

### **14 Severance**

- 13.1 If any provision of this Deed of Guarantee 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 hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

### **15 Third party rights**

- 14.1 A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

### **16 Governing Law**

- 16.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 16.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 16.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 16.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

16.5 ***[Provision dealing with the appointment of English process agent by a non English incorporated Guarantor]*** [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] ***[a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales]*** either at its registered office or on facsimile number ***[insert fax no.]*** from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by        )

***[Insert name of the Guarantor]*** acting by ***[Insert/print names]***

Director

Director/Secretary