



Department
for Environment
Food & Rural Affairs

www.gov.uk/defra

Contract for the Provision Specified Pathogen Free Eggs

Ref 20634

Date: 21/04/2015

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SECTION 1

FORM OF CONTRACT

PARTIES:

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

AND

- (2) VALO BioMedia GmbH of Sachenring 11, Osterholz-Schermbach, Niedersachsen, 27711, Germany (the "Contractor").

WHEREAS

- a) The Authority requires the provision of the Goods and Services detailed in the attached Specification Schedule.
- b) Following a competitive tendering process, the Authority has appointed the Contractor to provide the Goods and Services and the Contractor hereby agrees to provide those Goods and Services in accordance with the terms set out below.

NOW IT IS HEREBY AGREED as follows:

1. TERMS OF CONTRACT

- 1.1 The Contractor 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:	Terms & Conditions of Contract
Schedule 1:	Specification Schedule
Schedule 2:	Pricing Schedule
Schedule 3:	Contact Change Note
Schedule 4:	Commercially Sensitive Information
Schedule 5:	Non-Disclosure Agreement
Schedule 6:	Contractor and Third Party Software
Schedule 7:	Security Requirements, Policy and Plan

Schedule 8: Business Continuity and Disaster Recovery

- 1.3 Execution of this Contract is carried out in accordance with EU Directive 99/93 (Community Framework for Electronic Signatures) and the Electronic Communications Act 2000. **This Contract is formed on the date on which both the Authority and the Contractor have communicated acceptance of its terms on the Authority's e-tendering system ('Bravo').**
- 1.4 The Contract shall take effect on the 1st February 2015 (the "Commencement Date") and shall expire automatically on 31st January 2018, unless it is terminated or extended in accordance with the provisions of the Contract.
- 1.5 Pursuant to clause F8 of the General Conditions of Contract (Extension of Initial Contract Period), the Authority may extend the duration of the Contract by up to a maximum of 24 months. The provisions of the Contract will apply throughout any such extended period.

SECTION 2

TERMS AND CONDITIONS

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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:

“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.

“Approval” means the written consent of the Authority.

“Authorised Authority Representative” means the Authority representative named in CCN as authorised to approve agreed Variations 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 are: (i) supplied to the Contractor by or on behalf of the Authority; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or

(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 Contractor for the purposes of providing the G&S but excluding the Contractor 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 Contractor in connection with this Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Contractor System or which is necessary for the Authority to receive the G&S.

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

“BPSS” 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).

“Change Control Note” (“CCN”) means the agreed Schedule 3 annexed to the Contract containing details of agreed Variations 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 Contractor to the Authority in confidence for the period set out in that Schedule; and/or
- (b) that constitutes a trade secret.

“Completion Date” means the date of expiry of the Contract set out in clause A 4.1 (Initial Contract Period) of the Contract.

“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.

“Contract” means this written agreement between the Authority and the Contractor consisting of the following documents: Section 1 (Form of Contract); Section 2 (General Terms and Conditions); Schedule 1 (Specification Schedule); Schedule 2 (Pricing Schedule); Schedule 3 (Change Control); and such of Schedules 4 (Commercially Sensitive Information); 5 (Non-Disclosure Agreement); 6 (Contractor and Third Party Software); 7 (Security Requirements, Policy and Plan); 8 (Business Continuity and Disaster Recovery); 9 (Research and Development Provisions); and 10 (Research and Development Co-finding/provision) as are

specified in the Form of Contract. In the event of any conflict between any of these documents, they shall be given precedence in the order listed save that to the extent that any Special Conditions of Contract are inserted at the end of Section 2 (General Terms and Conditions) the Special Conditions of Contract shall take precedence over any other provisions in the Contract.

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

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

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

“Contractor Software” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the G&S and which is specified as such in Schedule 6 (Third Party Software) to this Contract.

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

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

“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.

“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.

“Environmental Information Regulations” 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.

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

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

“Force Majeure Event” means any circumstance not within a Party's reasonable control including:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, armed conflict,
- (d) collapse of buildings, fire, explosion or accident;
- (e) strikes, industrial action or lockouts (other than in each case by the Affected Party (as defined in clause G3.2, or companies in the same group as the Affected Party); and
- (f) interruption or failure of utility service.

“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.

“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.

“Goods” means any such goods as are to be supplied by the Contractor (or by the Contractor’s Sub-Contractor) under the Contract as specified in Schedule 1 (Specification Schedule) (including any modified or alternative goods as may be provided in accordance with clause E8.10 (Intellectual Property Rights)). For the avoidance of doubt, the “Eggs” as defined in Schedule 1 are Goods for the purposes of this Contract.

“G&S” means the Goods and/or Services.

“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.

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

“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.

“Installation Works” means, as the context so requires,

- (a) collectively, all works which the Contractor is to carry out at the beginning of the Contract Period to install the Goods in accordance with the Specification; or
- (b) where there are a series of works to be carried out during the Contract Period to install the Goods in accordance with the Specification, each set of installation works.

“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.

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

“Key Personnel” mean those persons named in the Specification as being key personnel.

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

“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 Contractor is bound to comply.

“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.

“Month” means calendar month.

“Party” means a party to the Contract.

“Premises” means the location where the G&S are to be supplied, as set out in the Specification.

“Pricing Schedule” means the Schedule containing details of the Contract Price.

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

“Purchase Order” means the document in which the Authority specifies the G&S which are to be supplied by the Contractor under the Contract.

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body (and their

successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule.

“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 Contractor for the submission of invoices.

“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 G&S or as listed by the Authority and/or relevant to the work of the Authority.

“Replacement Contractor” means any third party supplier appointed by the Authority to supply any goods and/or services which are substantially similar to any of the G&S and which the Authority receives in substitution for any of the G&S 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 Contractor (and/or any Sub-Contractor) wholly or mainly in the supply of the G&S immediately before the end of the Contract Period.

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

“Services” means the services to be supplied as specified in the Specification (including any modified or alternative services as may be provided in accordance with clause E8.10 (Intellectual Property Rights)).

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

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

“Specification Schedule” means the Schedule containing details of the Specification.

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

“Staff Vetting Procedure” means the Authority’s procedures for the vetting of personnel to the HMG standard of BPSS who have access to any of the Authority’s Premises, the Authority’s IT systems, or whose role will involve the handling of any data, information (including personal data as defined in the DPA and/or data to which any security classification has been applied), or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Acts 1911-1989 and as advised by the Authority to the Contractor.

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

“Tender” means the document(s) submitted by the Contractor to the Authority in response to the Authority’s invitation to suppliers for formal offers to supply it with the G&S.

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

“Third Party Software” means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the G&S including the software and which is specified as such in Schedule 6 (Third Party Software) to this Contract.

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

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

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

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

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

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.

A2 Authority’s Obligations

A2.1 Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, 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 Contractor.

A2.2 The Authority agrees to use the Goods only for the production of vaccine, for quality tests or for the preparation of other expendable items (which shall include chicks hatched in accordance with A2.3 below) further to the Authority’s

requirements set out in Schedule 1. Any other use of the Goods must be subject to further written agreement between the Parties.

A2.3 The Authority confirms that it will hatch chicks from Eggs (as defined in Schedule 1) for no other purpose than research, vaccines production and quality control. The Authority confirms that it will not hatch chicks from Eggs for the purposes of breeding and that all chicks will be destroyed promptly after use. Where practicable, chicks will be destroyed no later than 14 weeks after hatching.

A2.4 The Authority agrees not to use the Goods to prepare any material intended for use as a raw material for other production purposes than vaccines manufacturing (such as cell lines, sera, and antibodies). Where such material is prepared in breach of the restriction in this clause A2.4, the Parties agree that any Intellectual Property Rights therein shall vest in the Contractor.

A2.5 In the event that the Authority should breach the restrictions on the use of the Goods described in clauses A2.2 – A2.4, the Authority shall, in accordance with the Contractor's reasonable instructions and in addition to any other remedy available to the Contractor, promptly destroy all Flocks (as defined in Schedule 1) and other derived materials created from use of the Goods in breach of clause A2.2 to A2.4, under the Contractor or its representatives' supervision. The Authority agrees that it will be responsible for any acts or omissions of any of its directors, officers and employees (including the directors, officers and employees of APHA (as defined in Schedule 1)) in breach of clauses A2.2 – A2.4 as if they were the acts or omissions of the Authority.

A3 Contractor's Status

A3.1 At all times during the Contract Period the Contractor 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.

A3.2 The Contractor 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 Contractor is acting as the agent or employee of the Authority.

A4 Initial Contract Period

- A4.1 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).

A5 Notices

- A5.1 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.
- A5.2 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 A5.4. 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.
- A5.3 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 A5.4. 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.
- A5.4 For the purposes of clauses A5.2 and A5.3, the address of each Party shall be as stated in the Form of Contract.
- A5.5 Either Party may change its address for service by serving a notice in accordance with this clause.

A6 Mistakes in Information

- A6.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the supply of the G&S and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

A7 Conflicts of Interest

- A7.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will notify the Authority without delay giving full particulars of any such conflict of interest which may arise.
- A7.2 The Authority reserves the right to terminate the Contract immediately by notice in writing and/or to take or require the Contractor 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 Contractor 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 G&S

B1 The Specification

- B1.1 In consideration of the Contractor supplying the G&S during the Contract Period in accordance with the Authority's requirements as set out in the Specification and the provisions of the Contract the Contractor shall be paid the Contract Price.

B2 Samples

- B2.1 If requested by the Authority, the Contractor shall provide the Authority with samples of Goods for evaluation and Approval, at the Authority's cost and expense.

- B2.2 The Contractor shall ensure that the Goods are fully compatible with any equipment, to the extent specified in the Specification.
- B2.3 The Contractor acknowledges that the Authority relies on the skill and judgment of the Contractor in the supply of the Goods and the performance of the Contractor's obligations under the Contract.

B3 Delivery

- B3.1 Unless otherwise stated in the Specification, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Authority, the point of delivery shall be when the Goods are loaded on the Authority's vehicle.
- B3.2 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Contractor's suppliers or carriers at such place as the Authority or duly authorised person shall reasonably direct.
- B3.3 Any access to the Premises and any labour and equipment that may be provided by the Authority in connection with delivery shall be provided without acceptance by the Authority of any liability whatsoever to the extent permitted by law.
- B3.4 Where access to the Premises is necessary in connection with delivery or installation of the Goods, the Contractor and his Sub-Contractors shall at all times comply with the security requirements of the Authority.
- B3.5 The Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- B3.6 The Authority shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Authority elects not to accept such over-delivered Goods it shall give notice in writing to the Contractor to remove them within five (5) Working Days and to refund to the Authority any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Authority may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor unless they are accepted by the Authority.
- B3.7 Unless expressly agreed to the contrary, the Authority shall not be obliged to accept delivery by instalments. If, however, the Authority does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the

Authority, entitle the Authority to terminate the whole of any unfulfilled part of the Contract without further liability to the Authority.

- B3.8 The Authority may inspect and examine the manner in which the Contractor supplies the G&S at the Premises during normal business hours on reasonable notice. The Contractor shall provide free of charge all such facilities as the Authority may reasonably require for such inspection and examination. In this clause B3, G&S include planning or preliminary work in connection with the supply of the G&S.
- B3.9 Wherever reasonably requested to do so by the Authority, the Contractor shall co-ordinate his activities in supplying the G&S with those of the Authority and other contractors engaged by the Authority.
- B3.10 Subject to the Authority providing prior Approval in accordance with clause B8.2 (Provision and Removal of Equipment), timely supply of the G&S shall be of the essence of the Contract, including in relation to commencing the supply of the G&S within the time agreed or on a specified date. If the Contractor fails to deliver the G&S within the time promised or specified in the Specification, the Authority may release itself from any obligation to accept and pay for the G&S and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Authority.

B4 Risk and Ownership

- B4.1 Subject to clause B3.5 (Delivery), risk in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F1 (Failure to meet Requirements)), pass to the Authority at the time of delivery.
- B4.2 Ownership in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F1 (Failure to meet Requirements)), pass to the Authority at the time of delivery (or payment, if earlier).

B5 Non-Delivery

- B5.1 On dispatch of any consignment of the Goods the Contractor shall send the Authority an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit, fail to be delivered to the Authority on the due date for delivery, the Authority shall (provided that the Authority has been advised in writing of the dispatch of the Goods), within ten (10) Working Days of

the notified date of delivery, give notice to the Contractor that the Goods have not been delivered and may request the Contractor to deliver substitute Goods free of charge within the timescales specified by the Authority or terminate the Contract in accordance with clause B3.10 (Delivery).

B6 Labelling and Packaging

- B6.1 The Contractor shall ensure that the Goods supplied under this Contract shall be labelled and packaged in accordance with this Contract.
- B6.2 The Contractor shall comply with the Packaging & Packaging Waste Directive (94/62/EC), implemented in the UK by the Packaging (Essential Requirements) Regulations 2003 (as amended). The container in which the Goods are situated shall be labelled with the Contractor's name, the net, gross and tare weights, and contain a description of its contents. All containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.
- B6.3 In the supply of Goods under the Contract, the Contractor shall:
- (a) use packaging capable of easy recovery for further use or recycling. Packaging materials shall be easily separable by hand into recyclable parts consisting of one material (e.g. cardboard, paper, plastic, textile);
 - (b) (unless there is agreement to the contrary under clause B6.3) reuse the packaging and, where reuse is not practicable, recycle the materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packaging, where these fulfil other packaging specifications;
 - (c) make maximum use of materials taken from renewable sources, if recycled materials are not suitable or not readily available;
 - (d) where using wooden pallets or timber derived products for the packaging and supply of goods to the Authority: to comply with the UK timber procurement policy and the provisions in clause D6 (Timber and Wood Derived Products);
 - (e) review packaging specifications periodically to ensure that no unnecessary limitations on the use of recycled materials exist; and
 - (f) if requested to do so, provide the Authority with a description of the product packaging and evidence to satisfy the Authority that it is reusing, recycling and reviewing its use of packaging. The evidence should provide proof of compliance with BS EN 13430 on recyclability or BS EN 13429 on reusability, or equivalent.

B7 Training

- B7.1 Where indicated in the Specification, the Contract Price shall include the cost of instruction of the Authority's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements detailed in the Specification.

B8 Provision and Removal of Equipment

- B8.1 The Contractor shall provide all the Equipment and resource necessary for the supply of the G&S.
- B8.2 The Contractor shall not deliver any Equipment to nor begin any work on the Premises without obtaining prior Approval.
- B8.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.
- B8.4 Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- B8.5 If the cost of any Equipment is reimbursed to the Contractor such Equipment shall be the property of the Authority and shall on request be delivered to the Authority as directed by the Authority. The Contractor will keep a proper inventory of such Equipment and will deliver that inventory to the Authority on request and on completion of the G&S.
- B8.6 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- B8.7 The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- (a) remove immediately from 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.
- B8.8 On completion of the G&S the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the G&S and shall leave

the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to those Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

B9 Manner of Goods Delivery

B9.1 The Contractor shall perform its obligations under the Contract:

- (a) with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- (b) in accordance with Good Industry Practice; and
- (c) in compliance with all applicable Laws.

B9.2 The Contractor shall ensure that:

- (a) the Goods conform in all respects with the Specification and, where applicable, with any sample approved by the Authority;
- (b) the Goods operate in accordance with the relevant technical specifications and correspond with the requirements of the Specification and any particulars specified in the Contract;
- (c) the Goods conform in all respects with all applicable Laws; and
- (d) the Goods are free from defects in design, materials and workmanship and are fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Contractor by the Authority.

B10 Manner of Carrying Out the Services and Installation Works

B10.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Services and/or Installation Works has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services and/or Installation Works with the Authority prior to the supply of the Services and/or Installation Works and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

- B10.2 The Contractor shall ensure that all Staff supplying the Services and/or the Installation Works 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 and/or Installation Works. The Contractor shall ensure that those Staff are properly managed and supervised.
- B10.3 When the Contractor reasonably believes it has completed the Installation Works it shall notify the Authority in writing. Following receipt of such notice, the Authority shall inspect the Installation Works and shall, by giving written notice to the Contractor:
- (a) accept the Installation Works, or
 - (b) reject the Installation Works and provide reasons to the Contractor if, in the Authority's reasonable opinion, the Installation Works do not meet the requirements set out in the Specification.
- B10.4 If the Authority rejects the Installation Works in accordance with clause B10.3(b), the Contractor shall immediately rectify or remedy any defects and if, in the Authority's reasonable opinion, the Installation Works do not within two (2) Working Days or such other period agreed by the Parties, meet the requirements set out in the Specification, the Authority may terminate the Contract with immediate effect by notice in writing.
- B10.5 The Installation Works shall be deemed to be completed when the Contractor receives a notice issued by the Authority in accordance with clause B10.3(a). Notwithstanding acceptance of any Installation Works in accordance with that clause, the Contractor shall remain solely responsible for ensuring that the G&S and the Installation Works conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the Installation Works.
- B10.6 Throughout the Contract Period, the Contractor shall:
- (a) have at all times all licences, approvals and consents necessary to enable the Contractor and Staff to carry out the Installation Works;
 - (b) provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the Installation Works; and
 - (c) not, in the performance of its obligations under the Contract, in any manner endanger the safety or unlawfully interfere with the safety or convenience of the public.

B11 Key Personnel

- B11.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.
- B11.2 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.
- B11.3 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.
- B11.4 The Authority shall not unreasonably withhold its agreement under clauses B11.2 or B11.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.
- B11.5 The Authority may, by written notice to the Contractor, ask the Contractor to remove any Key Personnel whose continued presence would, in the reasonable opinion of the Authority, be undesirable. The Contractor shall comply with any such request immediately.
- B11.6 Key Personnel includes, but is not limited to the Contractor's Authorised Representative (as set out in section 9 of the Specification of Requirements).

B12 Contractor's Staff

- B12.1 The Authority may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:
- (a) any member of the Staff; or
 - (b) any person employed or engaged by any member of the Staff,
- whose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable.
- B12.2 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Authority's Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

- B12.3 The Contractor shall ensure that all Staff employed or engaged in the provision of the G&S and who have access to the Authority's Premises, the Authority System or any data or information of the Authority, or handle any data or information of the Authority, have been cleared in accordance with the Staff Vetting Procedures. The Contractor confirms that all Staff employed or engaged by the Contractor were either vetted by the Authority in accordance with the Staff Vetting Procedures or recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures and this was accepted by the Authority.
- B12.4 If the Contractor fails to comply with clause B12.2 immediately upon request and in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Crown, then the Authority may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- B12.5 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Contractor has failed to comply with clause B12.2 shall be final and conclusive.

B13 Inspection of Premises

- B13.1 Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting its Tender or other offer to supply the G&S and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

B14 Licence to Occupy Premises

- B14.1 Any land or Premises made available from time to time to the Contractor by the Authority in connection with the Contract shall be on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- B14.2 The Contractor shall limit access to the land or Premises referred to in clause B14.1 to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.
- B14.3 Should the Contractor require modifications to the Authority's Premises, such modifications shall be subject to prior Approval and shall be carried out by the

Authority at the Contractor's expense. The Authority shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.

- B14.4 The Contractor shall (and shall ensure that any Staff that are engaged within the boundaries of the Authority's Premises shall) observe and comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Authority's Premises or for the use of such Authority Premises as determined by the Authority, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- B14.5 The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

B15 Property

- B15.1 All Property shall be and remain the property of the Authority and the Contractor irrevocably licenses the Authority and its agents to enter any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- B15.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within five (5) Working Days of receipt.
- B15.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
- B15.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the G&S, in accordance

with the Authority's reasonable security requirements as required from time to time.

- B15.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Contractor shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

B16 Offers of Employment

- B16.1 Except in respect of any transfer of Staff under TUPE, for the duration of the Contract and for a period of twelve (12) Months thereafter the Contractor 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 G&S without prior Approval.

B17 Employment Provisions

- B17.1 Not later than twelve (12) Months prior to the end of the Contract Period, the Contractor shall fully and accurately disclose to the Authority all information that the Authority may reasonably request in relation to the Staff including the following:
- (a) the total number of Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law; and
 - (b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in (a) above; and
 - (c) the terms and conditions of employment/engagement of the Staff referred to in (a) above, their job titles and qualifications; and
 - (d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
 - (e) details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union.
- B17.2 At intervals to be stipulated by the Authority (which shall not be more frequent than every thirty (30) days) immediately prior to the end of the Contract Period the

Contractor shall deliver to the Authority a complete update of all such information which shall be disclosable pursuant to clause B17.1.

- B17.3 At the time of providing the information disclosed pursuant to clauses B17.1 and B17.2, the Contractor shall warrant the completeness and accuracy of all such information and the Authority may assign the benefit of this warranty to any Replacement Contractor.
- B17.4 The Authority may use the information it receives from the Contractor pursuant to clause B17.1 and B17.2 for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably request.
- B17.5 Where TUPE applies to the transfer of the G&S on expiry or termination of the Contract, the Contractor shall indemnify and keep indemnified and hold the Authority and the Crown (both for themselves and any Replacement Contractor) harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:
- (a) the provision of information pursuant to clause B17.1; and
 - (b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Contract Period; and
 - (c) any failure by the Contractor or any Sub-Contractor to comply with its obligations under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Authority or a Replacement Contractor to comply with its duties under Regulation 13 of TUPE; and
 - (d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
 - (e) any claim by any person who is transferred by the Contractor to the Authority and/or a Replacement Contractor whose name is not included in the list of Returning Employees.

- B17.6 If the Contractor becomes aware that the information it provided pursuant to clause B17.1 has become untrue, inaccurate or misleading, it shall notify the Authority and provide the Authority with up to date information.
- B17.7 This clause applies during the Contract Period and indefinitely thereafter.
- B17.8 The Contractor undertakes to the Authority that, during the twelve (12) Months prior to the end of the Contract Period the Contractor shall not (and shall procure that any Sub-Contractor shall not) without prior Approval (such Approval not to be unreasonably withheld or delayed):
- (a) amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the Contractor and the Staff in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the G&S);
 - (b) terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
 - (c) transfer away, remove, reduce or vary the involvement of any other Staff from or in the provision of the G&S (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse impact upon the delivery of the G&S by the Contractor, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the G&S); or
 - (d) recruit or bring in any new or additional individuals to provide the G&S who were not already involved in providing the G&S prior to the relevant period.

C PAYMENT AND CONTRACT PRICE

C1 Contract Price

- C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Contract Price 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 Contractor 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 Contractor shall submit a Valid Invoice to the Authority at the periods specified by the Authority in the Pricing Schedule. A Valid Invoice must contain the reference number of the relevant Purchase Order.
- C2.2 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable. The Contractor shall show the amount of VAT payable separately on all invoices as an extra charge. Where the Contractor fails to show VAT on any invoice, the Authority will not, at any later date, be liable to pay the Contractor any additional VAT.
- C2.3 All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing. The Authority shall provide the Contractor with a Purchase Order number and the Contractor shall include that number on every invoice submitted. Invoices without a valid Purchase Order number will be rejected.
- C2.4 The Valid Invoices submitted in accordance with clause C2.1 above (and checked and signed by Contractor's Representative as being accurate and complete) shall, where required by the Authority, be accompanied by supporting timesheets and/or delivery notes, and contain at least the following information:
- the Contractor's full name, address and title of the project;
 - the name of the individuals to whom the timesheet relates and hourly rates for each;
 - identification of which individuals are Contractor's staff and which are Sub-Contractors;
 - the address of the Premises and the date on which work was undertaken;
 - the time spent on the Premises by the individuals concerned;
 - the time spent working on the Premises by the individuals concerned (i.e. clocking on and off);
 - details of the type of work undertaken by the individuals concerned;
 - details of any plant or materials operated and on standby;
 - separate identification of any time spent travelling and/or meal or rest breaks;
 - where appropriate, details of the journey(s) made and distances travelled;
 - the name and quantity of the Goods delivered;

- the batch numbers; and
- Purchase Order number.

The timesheets must be signed, dated and verified by the Contract Manager or Authority supervising officer on the Premises before the Contractor departs each day. If properly completed and verified timesheets fully covering the work comprised in a Valid Invoice are not received along with a Valid Invoice then the Authority shall have no obligation to pay invoices to which those timesheets relate.

- C2.5 Any Contractor time spent on meal or rest breaks shall not be chargeable to or payable by the Authority. Contractor supervisors must ensure that all workers take adequate meal or rest breaks. Where operational plant is not in use during a meal or rest break then it shall also not incur any charges to the Authority. A meal or rest break will include breaks both in or outside an individual's workplace along with any time taken in travelling to or from the break location and/or any facilities for cleaning/changing/washing in preparation for or return from a meal or rest break. It is an assumption in the calculation of all timesheets and Valid Invoices that a minimum of thirty (30) minutes break will be taken within a shift of eight (8) hours, a minimum of forty-five (45) minutes break will be taken within a shift of between eight (8) and twelve (12) hours and a minimum of one (1) hour break will be taken within a shift in excess of twelve (12) hours and the Contractor's rates and Contract Price must include such breaks.
- C2.6 No overhead costs of the Contractor 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 G&S.
- C2.7 If the payment provisions as agreed by the Authority and set out in the Pricing Schedule expressly provide that the Authority may be charged for plant which is on standby then in circumstances where such plant was waiting to be transferred between Premises or where the Authorised Authority Representative had instructed that the plant be retained on the Premises then a standby charge of 60% of agreed rates may be made in respect of such relevant periods as supported by timesheets. Only the time spent by the Contractor's staff in actually working on the Premises shall be chargeable to or payable by the Authority, it is the Contractor's responsibility to incorporate any necessary travelling time and costs into the overall Contract Price when submitting a tender document. Where plant is on standby because no work was being carried out on the Premises at that time or no operator or other relevant staff were available (unless the standby is because the Contractor is awaiting licensing off the Premises on the instructions of the Authorised Authority Representative) then no standby rate shall be chargeable

to or payable by the Authority nor will any such charge be made if not expressly agreed by the Authority in writing.

- C2.8 No payment will be chargeable to or payable by the Authority in respect of any plant or equipment which is stood down during any notice period pursuant to Condition H1 (Termination on Insolvency and Change of Control), H2 (Termination on Default) and/or H3 (Termination on Notice) and the Contractor shall be under a duty to mitigate such costs as far as is reasonably possible e.g. by reutilising staff, plant, materials and services on other current or forthcoming applications or projects
- C2.9 In submitting any Valid Invoice for payment, the Contractor, 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 Contractor. Only the Contractor'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 G&S then the Contractor shall submit a separate invoice in respect of each of the G&S which attract different VAT rates.
- C2.10 Expenses may only be claimed by the Contractor where these are clearly identified, supported by original receipts and agreed in advance by the Authorised Authority Representative in writing.
- C2.11 Where the Authority, at its sole discretion, makes any payment to the Contractor 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 Contractor. All payments made by the Authority to a Contractor shall be on an interim basis pending final resolution of an account with a Contractor in accordance with the terms of this clause C2.
- C2.12 The Authority shall pay all sums due to the Contractor within thirty (30) days of Receipt 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 or Accounts Payable Team, Shared Services Directorate (SSD), Room 109, Lion House, Willowburn Trading Estate, Alnwick, Northumberland, NE66 2PF.
- C2.13 Any late payment of undisputed 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.

- C2.14 Where the Contractor 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 Contractor to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice.
- C2.15 The Contractor 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 Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.15 shall be paid by the Contractor 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.
- C2.16 The Contractor shall not suspend the supply of the G&S unless the Contractor 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 Contractor to the Authority (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor 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 Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.
- 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 Pricing Schedule and the provision in clause F6 (Variation), the Contract Price shall apply for the Initial Contract Period and following an extension pursuant to clause F8 (Extension of Initial Contract Period), to the date of expiry of the extended period, or such earlier date of termination or partial termination of the agreement in accordance with the Law or the provisions of the Contract.

C5 Euro

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

D. STATUTORY OBLIGATIONS AND REGULATIONS AND OTHER REQUIREMENTS

D1 Prevention of Corruption

- D1.1 The Contractor 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 Contractor 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 Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses D1.1 or D1.2, the Authority may:
- (a) terminate the Contract and recover from the Contractor 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 G&S and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; and

- (b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of those clauses.

D2 Prevention of Fraud

- D2.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Authority.
- D2.2 The Contractor 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 Contractor 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 Contractor 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 G&S and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; and
 - (b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause.

D3 Discrimination

- D3.1 The Contractor 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 Contractor shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, all as amended or replaced by the Equality Act 2010 (when in force) and the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- D3.2 The Contractor shall take all reasonable steps to secure the observance of clause D3.1 by all Staff.

- D3.3 The Contractor 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 Contractor 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 G&S 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 Contractor shall ensure that any equipment and materials used in the provision of the G&S do not contain:

- (a) ozone depleting substances such as Hydro Chloro Fluorocarbons (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 Contractor shall where relevant to its delivery of the G&S 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 Contractor 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 Contractor 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 Contractor 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 Contractor under this Contract.

D5.7 In relation to climate change adaptation, the Contractor shall:

- (a) Identify any risks arising from climate change and variable weather such as higher temperatures, droughts, flooding, sea and river level rises, coastal and

riparian erosion, water scarcity, and loss of water quality which may disrupt and/or affect the supply of the G&S to the Authority under this Contract; and

- (b) Where such risks have been identified, enhance the resilience of its organisation to enable it to adapt and deal with the effects of such extreme events, including by having the necessary awareness-raising, evaluation, preventive, preparatory, recovery measures and support systems in place in order to minimise any disruption to the supply of the G&S under this Contract.

D6 Timber and Wood Derived Products

D6.1 For the purposes of this clause D6, the following terms shall have the following meanings:

- (a) "Timber and wood-derived products" means any product that contains wood or wood fibre, with the exception of "recycled" materials (see below). Such products range from solid wood to those where the manufacturing processes obscure the wood element (e.g. paper). Timber and wood-derived products supplied or used in performance of the Contract that have been recycled or reclaimed are referred to as "recycled" timber, which is defined below. Timber and wood-derived products supplied or used in performance of the Contract that are not recycled are referred to as "virgin" timber when the distinction needs to be made for clarity. Short-rotation coppice is exempt from the requirements for timber and wood-derived products and falls under agricultural regulation and supervision rather than forestry.
- (b) "Legal and Sustainable" means production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions (only), as defined by the document titled "UK Government timber procurement policy: Definition of Legal and Sustainable for timber procurement" (available from the Authority on request and from the CPET website). The edition current on the day the Contract is awarded shall apply.
- (c) "FLEGT" means Forest Law Enforcement, Governance and Trade, and is a reference to the EU scheme to address the problem of illegally logged timber.
- (d) "FLEGT-licensed" means production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions (only), as defined by a bilateral Voluntary Partnership Agreement (VPA) between the European Union and a timber-producing country under the FLEGT scheme, where both Parties have agreed to establish a system under which timber that has been produced in accordance

with the relevant laws of the producing country, and other criteria stipulated by the VPA, are licensed for export by the producing country government. This may also include any timber that has been independently verified as meeting all the producing country's requirements for a FLEGT licence, where a VPA has been signed but the FLEGT licensing system is not fully operational. Evidence from a country that has not signed up to a VPA which demonstrates that all of the requirements equivalent to FLEGT-licensed timber have been met will also be acceptable. CPET will produce further guidance on FLEGT-licensed or equivalent timber in due course.

- (e) "Recycled" means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. The term "recycled" is used to cover the following categories: pre-consumer recycled wood and wood fibre or industrial by products but excluding sawmill co-products (sawmill co-products are deemed to fall within the category of virgin timber), post-consumer recycled wood and wood fibre, and drift wood. It also covers reclaimed timber which was abandoned or confiscated at least ten years previously. Documentary evidence and independent verification also apply to recycled materials, but will focus on the use to which the timber was previously put rather than the forest source.
- (f) "Short-rotation coppice" means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK government timber procurement policy requirements and falls under agricultural regulation and supervision rather than forestry. The exemption only refers to short-rotation coppice, and not 'conventional' coppice which is forest management and therefore subject to the timber policy.
- (g) "CPET" means the UK Government's Central Point of Expertise on Timber.

D6.2 All Timber and wood-derived products supplied or used by the Contractor in performance of the Contract (including all Timber and wood-derived products supplied or used by Sub-Contractors) shall comply with Schedule 1 (Specification Schedule).

D6.3 In addition to the requirements of D6.2 above, all Timber and wood-derived products supplied or used by the Contractor in performance of the Contract (including all Timber and wood-derived products supplied or used by Sub-Contractors) shall originate from a forest source where management of the forest has full regard for:

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

- (b) Mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
- (c) Safeguarding the basic labour rights and health and safety of forest workers.

- D6.4 If requested by the Authority, and not already provided at the tender evaluation stage, the Contractor shall provide to the Authority evidence that the Timber and wood-derived products supplied or used in the performance of the Contract complies with the requirements of Schedule 1 (Specification Schedule). If requested by the Authority, the Contractor shall provide to the Authority evidence that the Timber and wood-derived products supplied or used in the performance of the Contract complies with the requirements of the social criteria defined in D6.3 above.
- D6.5 The Authority reserves the right at any time during the execution of the Contract and for a period of six (6) years from final delivery under the Contract to require the Contractor to produce the evidence required for the Authority's inspection within fourteen (14) days of the Authority's written request.
- D6.6 The Contractor shall maintain records of all Timber and wood derived products delivered to and accepted by the Authority. Such information shall be made available to the Authority if requested, for a period of six (6) years from final delivery under the Contract.
- D6.7 The Authority reserves the right to decide whether the evidence submitted to it demonstrates legality and sustainability, or FLEGT-licence or equivalent, and is adequate to satisfy the Authority that the Timber and wood-derived product complies with Schedule 1 (Specification Schedule). The Authority reserves the right to decide whether the evidence submitted to it is adequate to satisfy the Authority that the Timber and wood-derived products complies with the requirements of the social criteria defined in D6.3 above. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an "independent verification" and resulting report that will (a) verify the forest source of the timber or wood and (b) assess whether the source meets the relevant criteria.
- D6.8 In this Contract, "Independent Verification" means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems (as amended from time to time) or equivalent, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to ISO 17011: 2004 General Requirements for Providing Assessment and

Accreditation of Conformity Assessment Bodies (as amended from time to time) or equivalent.

- D6.9 The Authority reserves the right to reject any Timber and wood-derived products that do not comply with Schedule 1 (Specification Schedule). The Authority reserves the right to reject any Timber and wood-derived products that do not comply with the requirements of the social criteria defined in D6.3 above. Where the Authority exercises its right to reject any Timber and wood-derived products, the Contractor shall supply alternative Timber and wood-derived products, which do so comply, at no additional cost to the Authority and without causing delay to the Contract completion period.

D7 Health and Safety

- D7.1 The Contractor 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 Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of its obligations under the Contract.
- D7.2 While on the Authority's Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there.
- D7.3 The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Authority's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- D7.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health 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.
- D7.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

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 Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E1.3 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor 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 Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format specified in the Specification.
- E1.5 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- E1.6 The 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 Contractor shall ensure that such back-ups are made available to the Authority immediately upon request.
- E1.7 The Contractor shall ensure that any system on which the Contractor 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 the Contractor's Default so as to be unusable, the Authority may:
 - (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so promptly; and/or
 - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- E1.9 If at any time the Contractor 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 Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

E2 Data Protection Act Compliance

- E2.1 The Contractor 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 Contractor is Processing Personal Data as a Data Processor for the Authority the 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 Contractor'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 Contractor'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 Contractor is in full compliance with its obligations under this Contract;
- (n) provide a written description of the technical and organisational methods employed by the Contractor for Processing Personal Data (within the timescales required by the Authority); and
- (o) not Process Personal Data outside the European Economic Area without prior Approval and, where the Authority consents to a transfer, to comply with:
 - (i) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the DPA by providing an adequate level of protection to any Personal Data that is transferred; and
 - (ii) any reasonable instructions notified to it by the Authority.

- E2.3 The Contractor 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 provision of this clause E2 shall apply during the Contract Period and indefinitely after its expiry.

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

- E3.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
 - (b) Section 182 of the Finance Act 1989.
- E3.2 In the event that the Contractor 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 Contractor.

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 Contractor 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 Contractor'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 Contractor as confidential and shall not disclose any Confidential Information belonging to the Contractor to any other person without the prior written consent of the Contractor, 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 Contractor hereby gives its consent for the Authority to publish the Agreement 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 Agreement, to the general public.

- E4.4 Where required by the Authority, the Contractor shall ensure that Staff, professional advisors and consultants sign a non disclosure agreement prior to commencing any work in connection with the Contract in substantially the form attached at Schedule 5 hereto. The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this clause E4.4. Where requested by the Authority, the Contractor 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 Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor's confidentiality obligations under the Contract.
- E4.5 The Contractor may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the G&S and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- E4.6 The Contractor shall not, and shall procure that the Staff do not, use any of the 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 Contractor:
- (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 Contractor hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; 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 Contractor'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 Contractor 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 G&S under the Contract, the Contractor undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- E4.13 The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the G&S under the Contract and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under clauses E4.1 to E4.6. The Contractor 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 Contractor 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 Contractor has failed to comply with clause E4.12.

E5 Freedom of Information

- E5.1 The Contractor 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 Contractor 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 Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- E5.5 The Contractor 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 Contractor or the G&S in certain circumstances:
- (a) without consulting the Contractor; or
 - (b) following consultation with the Contractor 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 Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

- E5.6 The Contractor 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 Contractor 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 Contractor 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 Contractor shall use its best endeavours to ensure that its Staff, professional advisors and consultants comply with clause E6.1.

E7 Security

- E7.1 The Authority shall be responsible for maintaining the security of the Authority's Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Authority while on the Authority's Premises, and shall ensure that all Staff comply with such requirements.
- E7.2 The Authority shall provide to the Contractor upon request copies of its written security procedures.
- E7.3 The Contractor 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.

- E7.4 Notwithstanding Condition E7.3, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the provision of G&S to their desired operating efficiency.
- E7.5 Any cost arising out of the actions of the Parties taken in compliance with clause E7.4 shall be borne by the Parties as follows:
- (a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Contractor); 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 Contractor by or on behalf of the Authority;
 - (b) prepared by or for the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract; or
 - (c) the result of any work done by the Contractor, the Staff or any Sub-Contractor in relation to the provision of the G&S (together with (a) and (b) above, the "IP Materials"),

shall vest in the Authority and the Contractor 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 Contractor of its obligations under the Contract.

- E8.2 The Contractor 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

Contractor. The Contractor shall execute all documentation and do all acts as are necessary to execute this assignment.

- E8.3 The Contractor shall waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract.
- E8.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the 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 Contractor or to any other third party supplying goods and/or services to the Authority.
- E8.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the G&S and the Contractor 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 Contractor under any provision of the Contract.
- E8.6 The Authority shall notify the Contractor 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 Contractor to the Authority.
- E8.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority or the Contractor) arising from the performance of the Contractor's obligations under the Contract ("Third Party IP Claim"), provided that the Contractor shall at all times:
- (a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
 - (b) take due and proper account of the interests of the Authority; and

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

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

E8.9 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.

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

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

and in the event that the Contractor is unable to comply with clauses E8.10(a) or (b) within twenty (20) Working Days of receipt by the Authority of the Contractor's notification the Authority may terminate the Contract with immediate effect by notice in writing.

E8.11 The Contractor 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 Contractor 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 G&S). For the avoidance of doubt, any Intellectual Property Rights that the Contractor created or developed prior to the Commencement Date shall remain the property of the Contractor.

E9 Audit

- E9.1 The Contractor 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 G&S supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract.
- E9.2 The Contractor agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the G&S.
- E9.3 The Contractor shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.
- E9.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

F. CONTROL OF THE CONTRACT

F1 Failure to meet Requirements

- F1.1 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the G&S 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 Contractor shall at its own expense re-schedule and carry out the G&S in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.
- F1.2 The Authority may by written notice to the Contractor reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Authority

of such Goods. If the Authority rejects any of the Goods pursuant to this clause the Authority may (without prejudice to its other rights and remedies) either:

- (a) have such Goods promptly, free of charge and in any event within five (5) Working Days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
- (b) treat the Contract as discharged by the Contractor's breach and obtain a refund (if payment for the Goods has already been made) from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Authority in obtaining other goods in replacement.

For the avoidance of doubt, the Authority will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with this clause F1.2.

- F1.3 The issue by the Authority of a receipt note for delivery of the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Authority's acceptance of them.
- F1.4 The Contractor hereby guarantees the Goods against faulty materials or workmanship for such period as may be specified in the Specification (Schedule 1) or, if no period is so specified, for a period of 18 months from the date of delivery. If the Authority shall within such guarantee period or within 25 Working Days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Authority may have) promptly remedy such defects (whether by repair or replacement as the Authority shall elect) free of charge.
- F1.5 Any Goods rejected by the Authority as described in clause F1.2 shall be disposed of by the Authority at the Contractor's risk and expense.

F2 Monitoring of Contract Performance

- F2.1 The Contractor 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.
- F2.2 The Authority shall be entitled, on giving 14 days' notice, in writing to the Contractor, to hold:
 - (a) monthly review meetings; and/or

(b) quarterly review meetings; and/or

(c) an annual review meeting

(collectively "Review Meetings")

and the Contractor shall ensure that the Review Meetings are attended by the Contractor's Authorised Representative (in accordance with Section 9 of the Specification of Requirements) and that any reporting material required in accordance with clause F2.3 (or otherwise) is provided in advance of any such meeting.

- F2.3 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 Contractor's performance in respect of the Services supplied under the Contract (including performance against Key Performance Indicators (KPIs)); the Contractor'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 the Specification.
- F2.4 The Contractor 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.
- F2.5 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 Contractor's obligations under this Contract.
- F2.6 The Authority shall provide the Contractor with a copy of the Review Report (if applicable) for any comments the Contractor may have. The Authority shall consider such comments and at its absolute discretion produce a revised Review Report.
- F2.7 The Contractor shall, within 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.
- F2.8 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Contractor's failure to meet its obligations under this Contract identified by the Review Report, or those which result from the Contractor's failure to meet the Authority's expectations notified to the Contractor or of which the Contractor ought reasonably to have been aware) shall be implemented at no extra charge to the Authority.

F2A Service Levels and KPIs

- F2A.1 The Contractor shall deliver the Services in accordance with the Service Levels and KPIs set out in Annex A of the Specification of Requirements. Where the Contractor's performance fails to meet the relevant KPI, the Authority shall, subject to clause F2A.2, be entitled to deduct the corresponding Service Credits (as set out in section 8 of the Specification of Requirements) from the next invoice.
- F2A.2 The Authority reserves the right to claim damages for failure to meet any KPI (as an alternative to clause F2A.2) provided the Authority serves prior notice in writing of its intention to do so.
- F2A.3 The Authority shall be entitled to refine, vary or modify the KPIs the Service Levels and the Service Credits from time to time during the Contract Period.

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

- F3.1 Where a complaint is received about the standard of G&S or about the manner in which any G&S have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Authority shall notify the Contractor, 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 Contractor, 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 G&S until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will once more be able to supply all or such part of the G&S in accordance with the Contract;
 - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the G&S 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 G&S;
 - (c) withhold or reduce payments to the Contractor, 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 Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the G&S by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the G&S. The Authority's rights under this clause F3.3 will not apply where;

- The Contractor is unable to deliver G&S (or any part thereof) due to a Force Majeure Event and the Contractor has complied with the provisions of clause G3;
- G&S cannot be delivered due to a suspicion of infection to the Contractor's flock, following serological checks which results in the flock being placed under quarantine and the suspected infection was not caused by the Contractor's negligence or wilful misconduct or failure to comply with its obligations in this contract.

F3.4 Where in the opinion of the Authority the Contractor has failed to supply all or any part of the G&S 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 Contractor 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 Contractor has been notified of a failure in accordance with Clause F3.4 the Authority may:

- (a) direct the Contractor, 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 Contractor, 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 Contractor has been notified of a failure in accordance with Clause F3.4, the Contractor 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.

F3.7 If, having been notified of any failure, the Contractor fails to remedy it in accordance with Clause F3.6 within the time specified by the Authority, the Authority may treat the continuing failure as a material breach of the Contract may terminate the Contract with immediate effect by notice in writing.

F4 Transfer and Sub-Contracting

- F4.1 Except where clauses F4.5 and F4.6 both apply, the Contractor shall not transfer, charge, assign, sub-contract or in any other way dispose of the 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 Contractor of any of its obligations or duties under the Contract.
- F4.2 The Contractor shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. Where appropriate, the Contractor shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the G&S fully in accordance with the Contract.
- F4.3 The Contractor shall ensure that all its Sub-Contractors and suppliers retain each record, item of data and document relating to the G&S 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 Contractor 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 Contractor to the Authority immediately.
- F4.5 Notwithstanding clause F4.1, the Contractor may assign to a third party (“the Assignee”) the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest which the Authority incurs under clause C2 (Payment and VAT)). Any assignment under this clause F4.5 shall be subject to:

- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
- (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
- (c) the Authority receiving notification under both clauses F4.6 and F4.7.

F4.6 In the event that the Contractor assigns the right to receive the Contract Price under clause F4.5, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

F4.7 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment.

F4.8 The provisions of clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without Approval.

F4.9 Subject to clause F4.10, the 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 Contractor's obligations under the Contract.

F4.10 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F4.11, 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.

F4.11 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F4.9 to a body which is not a Contracting Authority or if there is a change in the legal status of the 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 Contractor 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 Contractor.

F4.12 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor'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 Contractor'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.

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

F6.1 Subject to the provisions of this clause F6, the Authority may request a Variation to the Specification provided that such Variation to the Specification does not amount to a material change to the Specification.

- F6.2 The Authority may request a Variation to the Specification under clause F6.1 by notifying the Contractor in writing of the Variation to the Specification and giving the Contractor sufficient information to assess the extent of the Variation to the Specification and consider whether any change to the Contract Price is required in order to implement the Variation to the Specification. The Authority shall specify a time limit within which the Contractor shall respond to the request for a Variation to the Specification. Such time limit shall be reasonable having regard to the nature of the Variation to the Specification. If the Contractor accepts the Variation to the Specification it shall confirm the same in writing.
- F6.3 In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Authority may:
- (a) allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification; or
 - (b) terminate the Contract with immediate effect, except where the Contractor has already delivered all or part of the G&S or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).
- F6.4 Any Variation to the Contract will not take effect unless recorded in a Change Control 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 Variation in order to address the emergency. In such a situation, Variations may be approved by a different representative of the Authority. However, the Authorised Authority Representative shall have the right to review such a Variation and require a Change Control Notice to be entered into on a retrospective basis which may itself vary the emergency Variation.

F7 Severability

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

F8 Extension of Initial Contract Period

- F8.1 The Authority may, by giving written notice to the Contractor, extend the Contract for a further period up to the date set out in the Form of Contract. 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.

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 section 12 of the Sale of Goods Act 1979 or Parts I and II of the Supply of Goods and Services Act 1982.

- G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the G&S or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. This clause G1.2 will not apply for claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which arise as a consequence of G&S being subsequently identified as not SPF after delivery to APHA, if at the time of delivery to APHA, the Contractor had fully complied with the rules of European Pharmacopoeia and its obligations under this contract.
- G1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.
- G1.4 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.
- 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.
- G1.6 Unless otherwise specified by the Authority, the Contractor shall, with effect from the Commencement Date for such period as necessary to enable the Contractor to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract.

- G1.7 The Contractor shall hold employer's liability insurance in respect of Staff and such insurance shall be in accordance with any legal requirement from time to time in force.
- G1.8 The Contractor 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 Contractor 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 Contractor.
- G1.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- G1.11 The Contractor shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Contractor, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Contractor is an insured, a co-insured or additional insured person.

G2 Warranties and Representations

- G2.1 The Contractor warrants and represents 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 Contractor;
 - (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 Contractor 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 Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) any person engaged by the Contractor shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- (i) in the three (3) years (or period of existence where the Contractor 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;
- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Contractor's obligations under the Contract; and
- (k) it has complied with the Staff Vetting Procedures in respect of all Staff employed or engaged in the provision of the G&S and that all Staff employed or engaged by Contractor at the Commencement Date were either vetted by the Authority in accordance with the Staff Vetting Procedures or vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures and this was accepted by the Authority.

G3 Force Majeure

- G3.1 Subject to the remaining provisions of this clause G3, a Party may claim relief under this clause G3 from liability for failure to meet its obligations under the Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Contractor in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor.
- G3.2 The Party whose performance is directly affected by a Force Majeure Event ("Affected Party") shall as soon as reasonably practicable issue a Force Majeure Notice to the other Party, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- G3.3 If the Contractor is the Affected Party, it shall not be entitled to claim relief under this clause G3 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated but the Contractor has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of goods and services similar to the G&S, operating to the standards required by the Contract.
- G3.4 Subject to clause G3.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the G&S affected by the Force Majeure Event.
- G3.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- G3.6 If, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
 - i) the other Party shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3, or under clause F3.7; and

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

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

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

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

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

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

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

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor’s creditors; or
- (b) a petition is presented and not dismissed within fourteen (14) days or order made for the Contractor’s bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; 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 Contractor’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 Contractor 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 Contractor 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 Contractor 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 Contractor where the Contractor is a partnership and:

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
- (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- (f) any of the following occurs in relation to any of its partners:
 - (i) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors; 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 (a) The Authority may terminate the Contract with immediate effect by notice in writing and without compensation to the Contractor where the Contractor 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.
- (b) 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 Contractor with immediate effect if the Contractor commits a Default and if:
- (a) the Contractor 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 Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the 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 Contractor undisputed sums of money when due, the Contractor 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 Contractor 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 ninety (90) days written notice to the Contractor.

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 G&S, the Authority may recover from the Contractor 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 Contractor (for G&S supplied by the Contractor 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 Contractor except for G&S supplied by the Contractor 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 Contractor 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 Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- H5.2 The Contractor 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 Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H5.4 If the Contractor'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 Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Authority, the Contractor may

request a reasonable allowance of time and in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

H6 Recovery upon Termination

- H6.1 On the termination of the Contract for any reason, the Contractor 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 G&S;
 - (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor. 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 G&S to the Replacement Contractor and/or the completion of any work in progress; and
 - (d) promptly provide all information concerning the provision of the G&S which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the G&S have been provided and/or for the purpose of allowing the Authority and/or the Replacement Contractor to conduct due diligence.
- H6.2 If the Contractor fails to comply with clause H6.1(a) and (b), the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or Sub-Contractors where any such items may be held.

H7 Retendering and Handover

- H7.1 Within twenty-one (21) days of being so requested by the Authority, the Contractor 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 G&S.
- H7.2 The Authority shall take all necessary precautions to ensure that the information referred to in H7.1 is given only to potential providers who have qualified to tender for the future provision of the G&S.

- H7.3 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.
- H7.4 The Contractor 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 Contractor is required to provide under clause H7.1.
- H7.5 The Contractor shall allow access to the Premises, in the presence of the Authorised Authority Representative, to any person representing any potential provider whom the Authority has selected to tender for the future provision of the G&S.
- H7.6 For the purpose of access to the Premises in accordance with clause H7.5, where the Premises is on the Contractor's premises, the Authority shall give the Contractor 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 Contractor's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- H7.7 The Contractor shall co-operate fully with the Authority during the handover arising from the completion or earlier termination of the Contract. This co-operation, during the period of the new Contractor 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.
- H7.8 Within ten (10) Working Days of being so requested by the Authority, the Contractor 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 G&S. 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.

H8 Exit Management

- H8.1 Upon termination the Contractor shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Contractor of the G&S in accordance with the following procedure set out in clause H9 (Exit Procedures).

H9 Exit Procedures

- H9.1 Where the Authority requires a continuation of all or any of the G&S on expiry or termination of this Contract, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the G&S without disruption to routine operational requirements.
- H9.2 The following commercial approach shall apply to the transfer of the G&S:
- (a). Where the Contractor does not have to use resources in addition to those normally used to deliver the G&S prior to termination or expiry, there shall be no change to the Contract Price.
 - (b). Where the Contractor reasonably incurs additional costs, the Parties shall agree a Variation to the Contract Price based on the Contractor's rates either set out in the Pricing Schedule or forming the basis for the Contract Price.
- H9.3 When requested to do so by the Authority, the Contractor shall deliver to the Authority details of all licences for software used in the provision of the G&S including the software licence agreements.
- H9.4 Within one (1) Month of receiving the software licence information described above, the Authority shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the Authority a plan for licence transfer.

H10 Knowledge Retention

- H10.1 The Contractor shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Contractor 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 Contractor 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 Contractor 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 I2 (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 Contractor 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.

I2 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 Contractor 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 I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I2.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- 12.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the 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 Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7.
- (b) If the Contractor intends to commence court proceedings, it shall serve 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 Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7.

- (c) The Contractor may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 12.7, 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:

- (a) 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 Contractor (the "Arbitration Notice") stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- (c) 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 OF REQUIREMENTS

This Section sets out the Authority's requirements.

Definitions

For the purposes of Sections 3 and 4 of this Invitation to Tender (ITT), unless the context otherwise requires, the following words shall have the meanings given to them below.

Term	Meaning
Additional Order	means an order of a minimum of twenty-five (25) additional Eggs to be added to and delivered as part of the next Standard Order, as described in section 4.5. APHA shall not incur separate transportation and delivery charges for Additional Orders.
Ad Hoc Order	means urgent, additional orders for a minimum of twenty-five (25) Eggs to be delivered within five (5) Working Days, as described in sections 4.7 and 4.8.
APHA	means Animal and Plant Health Agency.
Defra	means Department for Environment, Food and Rural Affairs.
Eggs	means specified pathogen free chicken eggs.
EP	means European Pharmacopoeia.
EU	means European Union.
Grade	means position of value in a group.
Health Status	means current health in relation to definition in European Pharmacopoeia 5.1, Table 5.2.2-1: http://lib.njutcm.edu.cn/yaodian/ep/EP501E/05_general_texts/5.2_general_texts_on_vaccines/5.2.2.%20Chicken%20Flocks%20free%20from%20specified%20pathogens%20for%20the%20production%20and%20quality%20control%20of%20vaccines/5.2.2.pdf
HMRC	means HM Revenue and Customs
Flock	means a group of birds sharing a common environment and having their own caretakers who have no contact with non-SPF Flocks.
Flock ID	means the unique identification number or name of the Flock.
In-Lay	means birds which are old enough to produce eggs, e.g. at 24 weeks old.
Sex Ratio	means the proportion of male to females with respect to their comparative quantity.
SPF	means specified pathogen free.
Standard Order	means the fortnightly delivery as described in section 4.3 which is based on the annual volume of Eggs required and confirmed by the Authority each year.
UKAS	means United Kingdom Accreditation Services.

Working Day	means Monday to Friday, excluding weekends and bank holidays in England and Wales.
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1. Introduction

- 1.1 APHA are seeking a supplier of SPF chicken (*Gallus gallus*) Eggs for laboratory diagnostic and research purposes. APHA is an executive agency working on behalf of the Defra, Scottish Government and Welsh Government. APHA's role is to safeguard animal health and welfare as well as public health, protect the economy and enhance food security through research, surveillance and inspection.

2. Background

- 2.1 APHA's range of responsibilities includes statutory work for the UK government for disease control through surveillance activities, research and consultancy. A number of these animal related research and surveillance activities, such as vaccine development and identification of types of disease, require Eggs to provide tissues, embryos and live birds. It's important that these Eggs are free of specified pathogens or extraneous agents, as they could cause infection or contaminate the work. In addition there is a legal requirement that Eggs used in the production and quality controls of vaccines are free from specified pathogens.

3. Requirements

- 3.1 The Contractor shall supply Eggs (from Flocks) which comply with the current EP 5.2.2. Chicken Flocks free from Specified Pathogens for the Production and Quality Control of Vaccines:

http://lib.njutcm.edu.cn/yaodian/ep/EP501E/05_general_texts/5.2._general_texts_on_vaccines/5.2.2.%20Chicken%20Flocks%20free%20from%20specified%20pathogens%20for%20the%20production%20and%20quality%20control%20of%20vaccines/5.2._2.pdf

- 3.2 The Contractor shall be responsible for screening Flocks and Eggs to ensure that they meet the requirements specified in 3.1. Screening should be undertaken at a minimum frequency of once a month. This may be delivered directly by the Contractor or through subcontracting arrangements.
- 3.3 In the UK, UKAS has been appointed as the UK national accreditation body for Accreditation Regulations 2009 (SI No 3155/2009) and the EU Regulation (EC) 765/2008 and operates under a Memorandum of Understanding with UK Government. Under this scheme laboratories are accredited in accordance with the requirements of ISO/IEC 17025.
- 3.4 The Contractor's testing facilities used for screening purposes (or facilities used by the Contractor's subcontractors in supply of the goods) shall be accredited to ISO/IEC 17025 (or equivalent for the county the Contractor operates in).
- 3.5 The Contractor shall supply a current health screen certificate with each delivery and grade of Egg supplied. The certificate shall provide APHA with enough

information to allow traceability of each batch of Eggs supplied by the Contractor. The certificate shall include, as a minimum, the following information:

- Grade or type of Eggs
- Flock ID
- Country of origin
- Date of collection of samples, actual date of testing and duration of test
- List of agents tested for (as per EP 5.2.2-1)
- Test methods and results

3.6 On delivery to APHA, the Eggs shall be a maximum of 8 days old and maintain a minimum fertility of 85%. This shall be subject to APHA storing and incubating the Eggs to the Contractor's recommended conditions.

3.7 The Contractor shall ensure that birds supplying the Eggs shall be a minimum of twenty-four (24) weeks old and no older than 64 weeks, unless by prior agreement with APHA.

3.8 The Contractor shall maintain Flock management data records for Flocks being reared and In-Lay. Records shall include as a minimum:

- Size of Flock and mortality/culls
- Sex ratio
- Feeding and welfare systems
- Numbers of Eggs collected and Egg quality
- Egg collection and storage conditions
- Flock health records such as laboratory and veterinary reports

This information shall be made available to APHA on request.

4. Quantity

4.1 In the previous twelve (12) month period, APHA has purchased approximately seventy thousand (70,000) Eggs, with an average of two thousand five hundred (2,500) to three thousand (3,000) Eggs required per fortnight. Volume figures are included as a guide only; the Authority cannot guarantee a minimum or maximum annual order volume.

4.2 APHA shall confirm the annual volume of Eggs required two months before the commencement of each year of the Contract. The first standing order shall be confirmed on commencement of the Contract. Thereafter the standing order shall be confirmed by APHA no later than 1st December each year.

4.3 The standing order shall be divided into twenty-four batches of equal size which the Contractor shall then be required to deliver to APHA on a fortnightly basis from 1st February to 31st January each year ("Standard Order").

4.4 APHA shall agree the delivery schedule of Standard Orders with the Contractor on commencement of the Contract. This shall include adjustments to account for public holidays.

4.5 APHA may require additional Eggs to be added to the Standard Order ("Additional Orders"). Additional Orders shall be for a minimum of twenty-five (25) Eggs and be

added to the Standard Order at the request of APHA. The Contractor shall deliver Additional Orders as part of the next fortnightly delivery. APHA shall not incur separate transportation and delivery charges for Additional Orders.

- 4.6 APHA shall give the Contractor a minimum of seven (7) days' notice of any change to a Standard Order or delivery schedule.
- 4.7 APHA may also have a requirement for urgent, additional orders ("Ad Hoc Orders"). These shall be requested by APHA on an ad hoc basis and shall be for a minimum of twenty-five (30) Eggs.
- 4.8 The Contractor shall be required to deliver Ad Hoc Orders within five (5) Working Days of receipt of the Ad Hoc Order.
- 4.9 All orders, both Standard and Ad Hoc Orders, shall be placed by APHA via phone (with written confirmation) or by email. The Contractor shall provide a named contact plus a deputy contact, as well as details of their standard working hours.

5. Quality Assurance

- 5.1 APHA auditors shall be provided with access to the Contractor's facilities (relevant to delivery of the Goods) to undertake quality assurance audits. During such audits, APHA will be required to adhere to all biosecurity requirements. Audits shall be undertaken on an annual basis.
- 5.2 All written and verbal communications from the Contractor to APHA shall be in English.
- 5.3 The Contractor shall inform APHA within twenty-four (24) hours of any diseases, infectious agents or Flock health issues that could adversely affect batches of Eggs that have been supplied, or would disrupt or affect agreed orders. APHA will provide an out of hours contact number for any such communications.
- 5.4 In the event of any disruption to supply, the Contractor shall be responsible for sourcing an alternative supply of Eggs of the same standard, quality and quantity within forty-eight (48) hours of disruption to normal supply. Alternative arrangements shall be made by the Contractor to ensure continuity of supply until such time that the Contractor is in a position to resume normal supply arrangements.
- 5.5 If the Contractor is seeking to appoint a subcontractor as part of their arrangements to ensure an alternative supply the Contractor shall be required to seek approval from APHA first. The Contractor shall ensure that any alternative supply conforms with the Specification of Requirements.
- 5.6 The Contractor shall notify APHA as soon as they are in a position to resume normal supply arrangements.

6. Transport, Delivery & Payment

- 6.1 The Contractor shall be responsible for transport and delivery of the Eggs to APHA Weybridge. Where air freight is required, the Contractor shall employ and oversee a licensed courier company to be responsible for collecting consignments 'air side' at the airport and delivering to APHA on the required date.
- 6.2 The Contractor shall ensure that all deliveries of Standard, Additional and Ad Hoc Orders shall be dispatched to arrive between 8am and 3pm, Monday to Friday, excluding bank holidays and weekends.
- 6.3 The Contractor shall ensure that each delivery is accompanied by a delivery note, which includes, as a minimum, the following information, in addition to a health certificate and an import certificate (where appropriate):
- Contractor's name and address
 - APHA order number
 - Quantity
 - Date of dispatch
- 6.4 Eggs shall be transported in environmentally controlled conditions which ensure that the temperature of the Eggs is maintained between thirteen (13) and twenty-one (21) degrees Celsius. Each batch shall include a temperature monitor placed within one of the transport containers to provide details of transport conditions. The temperature monitor shall be capable of providing APHA with the maximum and minimum temperatures, at dated hourly intervals, throughout the whole transportation process. This information should be in a format that can be archived by APHA.
- 6.5 Eggs shall be transported in break resistant packaging to minimise the risk of breakages during transportation.
- 6.6 Eggs which are damaged or subsequently identified as not SPF will be discarded by APHA and the number and extent of disposals required reported to the Contractor within forty-eight (48) hours of delivery. Any Eggs requiring disposal will not be paid for and the Contractor shall be responsible for issuing a credit note, within ten (10) Working Days of the issue being reported by APHA.

7. Performance Framework - Service Levels and Key Performance Indicators

- 7.1 Key Performance Indicators (KPIs) are essential in order to align supplier 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. Without the use of service credits in such a situation, this service failure places strain on the relationship as delivery falls short of agreed levels. As a result, the only recourse would be to terminate and seek an alternative supply.
- 7.2 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.

7.3 The KPIs are set out at Annex A.

8. Service Credits

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

- Service credits sit within the wider service management approach being pursued by the Contractor and the Authority.
- The service credit regime would be instigated on each occasion where there is a service failure (i.e. where a KPI is identified as having a 'Red status'). This would give rise to a remediation plan.
- Failure to achieve the overall performance target of a minimum of 'Amber status' for KPI 6 and a minimum of 'Green status' for KPIs 3 and 4 each month would result in the reimbursement of 5% of the total order value for the order in which the service failure occurred.
- Service failure in the subsequent month for the same KPIs would have a cumulative effect – i.e. would increase the charges at risk for that service failure by a further 5% of the total charges for the order in which the service failure persists.
- Achieving the KPI within the next order renders that service failure resolved.
- The Authority has full and complete discretion on whether to claim all, part or none of a service credit to which it is due.
- Service credits claimed will be paid to the Authority as a credit note within a month following the date at which the service credits are due.
- The full, agreed service credit regime will operate from the initial delivery date until the end of the contract period.

9. Governance/Contract Management

- 9.1 The quality of the service provided will be regularly monitored by the Authority against the elements outlined above and the Contractor shall assist in this process by providing access to the Contractor's records as required.
- 9.2 The Contractor will be required to participate in a review meeting every six months with APHA to review the quality and performance of the services provided. The Contractor shall be appropriately represented at the review meetings which will either be held face to face or conducted by teleconference. The Contractor shall be given fourteen (14) days of notice of any review meeting.
- 9.3 In the event of any problems affecting supply, the Contractor's Authorised Representative must be available for either a face to face or teleconference within two (2) Working Days of the problem arising.
- 9.4 The Contractor shall appoint a nominated person of appropriate grade to be the Contractor's authorised representative to manage the provision of the service and to liaise with the Authority as required. At any meeting it will be assumed the

Contractor's Authorised Representative will be authorised to make critical decisions.

- 9.5 The Contractor shall be responsible for any travel and subsistence costs incurred as a result of attendance at any review meeting.
- 9.6 The Contractor shall produce a monthly performance management report, detailing the Contractor's performance against the KPIs. The report will be circulated to APHA on a six (6) monthly basis, no later than fourteen (14) days after the end of the six (6) monthly period.
- 9.7 APHA shall have the right to audit any of the results presented in the monthly Performance Management Report at any time.
- 9.8 The Contractor will be required to provide a remediation plan to address any issues highlighted in the six (6) monthly reports, no later than fourteen (14) days after the receipt of the monthly performance management report.

ANNEX A

KEY PERFORMANCE INDICATORS (KPI's)

Metric	KPI	What is required to make this measurable	KPI Measurement	KPI Rating (1- 3 scale)		
				1	2	3
Contract Management	KPI 1 – Responsiveness	Authority's view of Contractor's responsiveness to APHA queries	Contractor's Authorised Representative responds to queries from APHA within 1 working day	Responds within 4 or more working days	Responds within 2 - 3 working days	Responds within 1 working day
	KPI 2 – Data Management	Authority's view of the accuracy of the Contractor's flock management data records	Authority's audit of Contractor flock management data record	Below expectations (complies less than 95% of the time)	Meets expectations (complies 96% to 98% of the time)	Exceeds expectations (complies 99% to 100% of the time)
Delivery & Support	KPI 3 – Continuity of Supply (Quantity)	Contractor to track monthly compliance against specified order volumes	Orders delivered as per the specification of requirements	Incorrect volume delivered (per month)	N/A	Correct volume delivered (per month)
	KPI 4 – Continuity of Supply (Delivery Frequency)	Contractor to track monthly compliance against specified	Orders delivered as per the specification of requirements	Not delivered on the date specified (per month)	N/A	Delivered on the date specified (per month)

		delivery schedule				
	KPI 5 – Delivery Information	Authority to track monthly compliance with provision of specified delivery documents	Comprehensive delivery documents supplied with each delivery	Below expectations (complies for less than 95% of Orders per month)	Meets expectations (complies for 96% to 98% of Orders per month)	Exceeds expectations (complies for 100% of Orders per month)
Quality	KPI 6 – Quality of Eggs	Contractor to track number of Eggs rejected per month because of non-compliance with quality standards	Eggs comply with the specified quality standards	Below expectations (more than 15% rejected in any month)	Meets expectations (between 6% and 15% rejected in any month)	Exceeds expectations (no more than 5% rejected in any month)

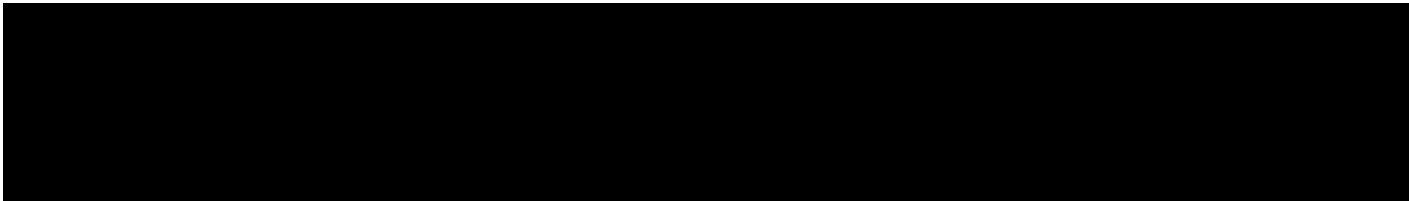
1. **Introduction:** The document discusses the importance of maintaining accurate records of all transactions, including sales, purchases, and expenses, for tax purposes. It emphasizes the need for proper documentation and record-keeping to ensure compliance with tax laws and to maximize deductions.

2. **Record-Keeping Requirements:** The document outlines the specific requirements for record-keeping, including the need to maintain original receipts, invoices, and other supporting documents. It also discusses the importance of keeping records for a sufficient period of time to allow for potential audits.

3. **Deductions and Credits:** The document provides information on various deductions and credits available to taxpayers, such as the standard deduction, itemized deductions, and tax credits. It explains how these deductions and credits can reduce taxable income and lower the overall tax liability.


4. **Reporting Requirements:** The document discusses the requirements for reporting income and expenses on tax returns. It covers the different types of income, such as wages, salaries, and investment income, and the corresponding reporting forms (e.g., W-2, 1099).

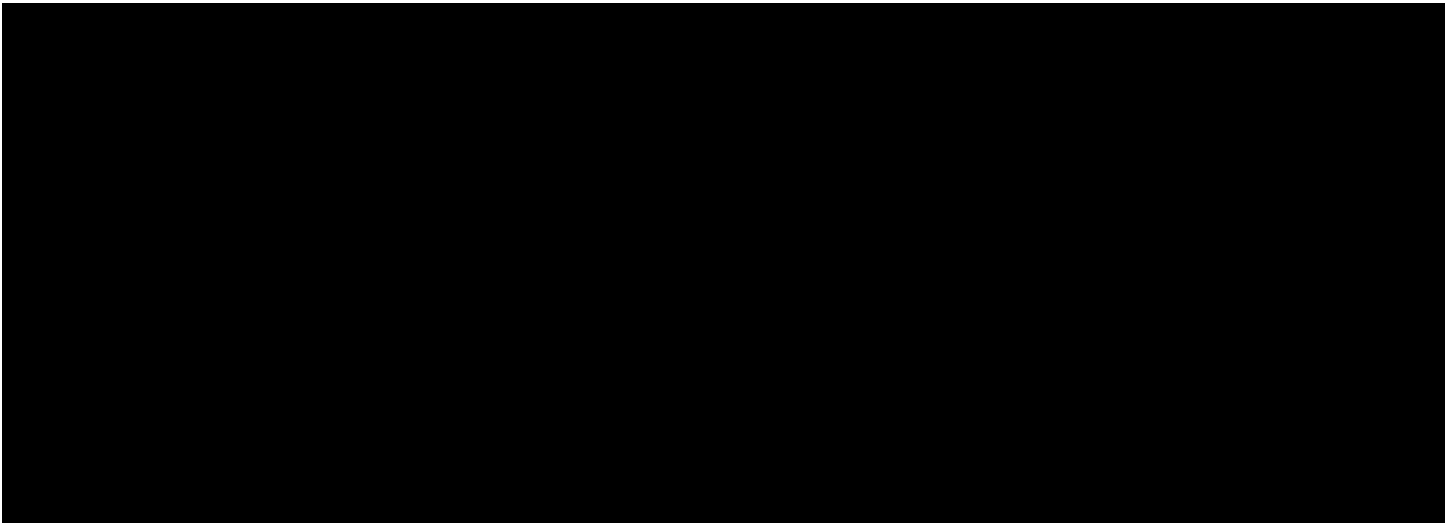
5. **Conclusion:** The document concludes by reiterating the importance of accurate record-keeping and proper documentation for tax purposes. It encourages taxpayers to consult with a tax professional for more detailed guidance and to ensure compliance with all applicable tax laws.



9. The value of the contract shall be capped at £444,000. The maximum annual values for the fixed term of the Contract are set out in table 2.

Table 2

Contract Year	Maximum Annual Value
	
TOTAL VALUE	£444,000



SCHEDULE 3

CONTRACT CHANGE NOTE

Contract Change Note

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

WHEREAS the [Contractor/Provider] and the [Authority/Contracting Body] entered into a [Contract/Framework Agreement] for the supply of [project name] dated [dd/mm/yyyy] (the 'Original Contract'/Framework Agreement) and now wish to amend the [the 'Original Contract'/Framework Agreement].

IT IS AGREED as follows

1. With effect from [date] the [Original Contract/Framework Agreement] shall be amended as set out in this Change Control Note:

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

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

Signed for and on behalf of the [Contractor/Provider] by:

Name	
Title	
Signature	
Date	

Signed for and on behalf of the [Authority/Contracting Body] by:

Name	
Title (Authorised Authority / Contracting Body Representative)	
Signature	
Date	

SCHEDULE 4

COMMERCIALLY SENSITIVE INFORMATION SCHEDULE

[insert commercially sensitive information as appropriate and if known the dates that the information will remain commercially sensitive]

- 1.1 Without prejudice to the Authority's general obligation of confidentiality, the Parties acknowledge that the Authority may have to disclose Information in or relating to the Contract following a Request for Information pursuant to clause E5 (Freedom of Information).
- 1.2 In this Schedule the Parties have sought to identify the Contractor's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.
- 1.3 Where possible the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies.
- 1.4 Without prejudice to the Authority's obligation to disclose Information in accordance with the Freedom of Information Act 2000 and the Environmental Information Regulations, the Authority will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in s.43 of the Freedom of Information Act 2000 to the Information listed below.

CONTRACTOR'S COMMERCIALLY SENSITIVE INFORMATION	DATE	DURATION OF CONFIDENTIALITY

SCHEDULE 5

NON DISCLOSURE AGREEMENT

THIS NON DISCLOSURE AGREEMENT is made the day of *[insert date]*
("the Commencement Date")

BETWEEN:

[Insert full name of contractor] of *[insert full address but if registered company please insert the following -* (registered in England and Wales under number *[insert company number]*) whose registered office is situated at [] ("the Contractor");

and

[Insert name and address of the Staff member, professional advisor or consultant of the Contractor] (the "Disclosee").

each a "**Party**" and together the "**Parties**".

WHEREAS:

- (a) The Contractor has contracted with the Secretary of State for Environment, Food and Rural Affairs ("the Authority") to provide goods and/or services to the Authority in an agreement dated *[insert date]* ("the Principal Contract").
- (b) The Principal Contract places an obligation of confidentiality on the Contractor. The Disclosee is an *[insert employee, professional advisor or consultant]* of the Contractor engaged in the provision of certain goods and/or services to the Authority in support of or in connection with the goods and/or services to be provided by the Contractor under the Principal Contract.
- (c) The Disclosee may therefore, have communicated to it, certain Confidential Information belonging to the Authority which is proprietary and must be held in confidence. Accordingly, the Principal Contract (clause E4.4) requires the Contractor to ensure that the Disclosee enters into a non disclosure agreement with the Contractor on the terms and conditions set out herein.
- (d) Any Confidential Information disclosed by the Authority or the Contractor to the Disclosee, whether contained in original or copy documents, will at all times remain the property of the Authority together with all notes, memoranda and drawings that have been made as a result of access to such Confidential Information.

NOW IT IS AGREED as follows:

Definition and Interpretation

1. In this Agreement:

- a) “Confidential Information” means: any information which has been designated as confidential by the Authority in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) whether commercial, financial, technical or otherwise including (without limitation) information belonging to or in respect of the Authority which relates to research, development, trade secrets, formulae, processes, designs, specifications, Authority data, internal management, information technology and infrastructure and requirements, price lists and lists of, and information about, customers and employees, all materials and information belonging to third parties in respect of which the Disclosee owes obligations of confidence; information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, intellectual property rights or know-how of the Authority and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988; whether or not that information is marked or designated as confidential or proprietary; whether arising prior to, on or after the Commencement Date;
- b) “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 of which the Contractor is bound to comply.
2. In construing this Agreement the general words introduced or followed by the word include(s) or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
3. Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.
4. Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.
5. References to any person shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, government department, agency, or any association or partnership (whether or not having a separate legal personality).

CONFIDENTIALITY

6. The Disclosee undertakes to: hold in confidence all Confidential Information and safeguard it accordingly; and that any Confidential Information supplied will not be used by it for any purpose other than in connection with the Contractor’s delivery of the goods and/or services under the Principal Contract without the prior written permission of the Authority.
7. The Disclosee will take all necessary precautions to ensure that the Confidential Information is held in confidence and will provide proper and secure storage for all

information and any papers, drawings or other materials which relate to or are compiled from such information.

8. The Disclosee shall, with respect to any Confidential Information it receives directly from or on behalf of the Authority or from the Contractor, comply, with all instructions and/or guidelines produced and supplied by or on behalf of the Authority from time to time for the handling and storage of Confidential Information, generally or for specific items.
9. The Disclosee will not disclose any Confidential Information or any part thereof to any third party.
10. Where the Disclosee is an employee, breach of the obligations set out herein in this Agreement shall be a cause of disciplinary proceedings, and the Contractor shall institute and enforce such disciplinary proceedings as against the Disclosee in relation to such breach.
11. Where the disclose is a professional advisor or consultant, breach of the obligation set out herein shall entitle the Contractor to terminate the contract of engagement with the Disclosee immediately, and the Contractor shall enforce such right of termination as against the Disclosee in relation to such breach.
12. All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Contractor or where so required by the Authority and notified to the Disclosee, to the Authority, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
13. The Confidential Information will not be used by the Disclosee for any purpose or in any way other than under this Agreement.
14. The following circumstances shall not constitute a breach of the obligations of confidentiality contained in this Agreement:
 - a. Disclosure of Confidential Information by the Disclosee when required to do so by Law or pursuant to the rules or any order having the force of Law of any court, of competent jurisdiction;
 - b. Disclosure of Confidential Information by the Disclosee where and to the extent that the Confidential Information has, except as a result of breach of confidentiality, become publicly available or generally known to the public at the time of such disclosure;
 - 14.3 Disclosure of Confidential Information by the Disclosee where and to the extent that the Confidential Information is already lawfully in the possession of a recipient or lawfully known to it prior to such disclosure;
 - 14.4 Possession of Confidential Information by the Disclosee where it has been acquired from a third party who is not in breach of any obligation of confidence in providing that Confidential Information;
provided that, in no event shall information relating to the affairs of any identifiable person be disclosed or released from the obligations herein without the prior written consent of the Authority.

15. The Disclosee shall: notify the Contractor and the Authority promptly of the date and circumstances of the loss or unauthorised disclosure, if any, of the Confidential Information or any part of the Confidential Information and in addition, the action being taken to rectify that loss or unauthorised disclosure.
16. The obligations contained in this Agreement shall continue until notified in writing by the Authority or the Confidential Information becomes public knowledge (other than by breach of the terms of this Agreement).
17. No licence of any intellectual property rights (including but not limited to patent rights, copyrights, trademarks and rights in proprietary information and/or know-how and whether registerable or unregistrable) is granted hereby, beyond that necessary to enable use of the Confidential Information for the purpose for which the Confidential Information was released.
18. Nothing in this Agreement shall be construed as compelling any of the Parties to disclose any Confidential Information or to enter into any further contractual relationship with any other party.
19. No representation or warranties are given regarding the accuracy, completeness or freedom from defects of the Confidential Information or with respect to infringement of any rights including intellectual property rights of others.
20. Without affecting any other rights or remedies that the other Parties to this Agreement may have, the Disclosee acknowledges and agrees that damages alone would not be an adequate remedy for any breach of any of the provisions of this Agreement.

GENERAL

21. No failure or delay by any Party to this Agreement in exercising any of its rights hereunder shall operate as a waiver of such rights, nor shall any single or partial exercise preclude any further exercise of such rights. Any waiver by a Party of any breach or non-compliance with any term of this Agreement shall not constitute a waiver of any subsequent breach of non-compliance with the same or any other term of this Agreement.
22. No Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the Authority.
23. Any notice under this Agreement shall be in writing and shall be delivered by post, fax or e-mail to the address of the Party in question set out at the beginning of this Agreement or such other address (or e-mail address or fax number) as the Parties may notify one another from time to time.
24. The Parties do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement other than the Authority. The Parties shall only with the prior written consent of the Authority be entitled to vary any of the provisions of this

Agreement without notifying or seeking the consent of any third party and the rights conferred by section 2 of the Contracts (Rights of Third Parties) Act 1999 are excluded.

25. This Agreement shall be governed by and shall be interpreted in accordance with the laws of England.
26. The Parties to this Agreement irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and accordingly that any proceedings, suit or action arising out of or in connection therewith shall be brought in such courts

This Agreement has been entered into on the date first written above.

SIGNED by the authorised signatory for and on behalf of the Contractor:

SIGNED by the Disclosee:

SCHEDULE 6

CONTRACTOR AND THIRD PARTY SOFTWARE

CONTRACTOR SOFTWARE

For the purposes of this Schedule 7, “*Contractor Software*” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Goods and/or Services. The Contractor Software comprises the following items:

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

THIRD PARTY SOFTWARE

For the purposes of this Schedule 7, “*Third Party Software*” means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Goods and/or Services including the software specified in this Schedule 7. The Third Party Software shall consist of the following items:

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

SCHEDULE 7

SECURITY REQUIREMENTS, POLICY AND PLAN

INTERPRETATION AND DEFINITION

For the purposes of this Schedule 8, unless the context otherwise requires the following provisions shall have the meanings given to them below:

- (a) “Authority System” means the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection with this Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Contractor System or which is necessary for the Authority to receive the Goods and/or Services.
- (b) “Breach of Security” means the occurrence of unauthorised access to or use of the Premises, the Premises, the Goods and/or Services, the Contractor System, or any ICT or data (including the Authority Data) used by the Authority or the Contractor in connection with the Contract.
- (c) “Contractor Equipment” means the hardware, computer and telecoms devices and equipment supplied by the Contractor or its Sub-Contractor (but not hired, leased or loaned from the Authority) for the provision of the Goods and/or Services.
- (d) “Contractor System” means the information and communications technology system used by the Contractor in performing the Goods and/or Services including the Software, the Contractor Equipment and related cabling (but excluding the Authority System).
- (e) “Contractor Software” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Goods and/or Services and which is specified as such in Schedule 7 (Third Party Software) to this Contract.
- (f) “Information Assurance Standards” means the HMG Information Security Standards issued by the Cabinet Office as a supplement to the HMG Security Policy Framework.
- (g) “ICT” means Information Communications Technology and includes a diverse set of technological tools and resources used to communicate, and to create, disseminate, store and manage information, including computers, the Internet, broadcasting technologies (radio and television), and telephony.

- (h) "Protectively Marked" shall have the meaning as set out in the HMG Security Policy Framework.
- (i) "Security Plan" means the Contractor's security plan prepared pursuant to paragraph 3 of Schedule 8 (Security Policy and Plan), an outline of which is set out in an Appendix to this Schedule.
- (j) "Software" means Specially Written Software, Contractor Software and Third Party Software.
- (k) "Specially Written Software" means any software created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Contract.
- (l) "Third Party Software" means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Goods and/or Services including the software and which is specified as such in Schedule 7 (Third Party Software) to this Contract.

1. INTRODUCTION

This Schedule covers:

- 1.1 Principles of security for the Contractor System, derived from the HMG Security Policy Framework, including without limitation principles of physical and information security;
- 1.2 Wider aspects of security relating to the Goods and/or Services;
- 1.3 The creation of the Security Plan;
- 1.4 Audit and testing of the Security Plan;
- 1.5 Conformance to Information Assurance Standards; and
- 1.6 Breaches of security.

2. PRINCIPLES OF SECURITY

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

2.2.2 complies with HMG Security Policy Framework;

2.2.3 meets any specific security threats to the Contractor System; and

2.2.4 complies with Information Assurance Standards.

2.3 Without limiting paragraph 2.2, the Contractor shall at all times ensure that the level of security employed in the provision of the Goods and/or Services is appropriate to maintain the following at acceptable risk levels (to be defined by the Authority):

2.3.1 loss of integrity of Authority Data;

2.3.2 loss of confidentiality of Authority Data;

2.3.3 unauthorised access to, use of, or interference with Authority Data by any person or organisation;

2.3.4 unauthorised access to network elements, buildings, the Premises, and tools used by the Contractor in the provision of the Goods and/or Services;

2.3.5 use of the Contractor System or Goods and/or Services by any third party in order to gain unauthorised access to any computer resource or Authority Data; and

2.3.6 loss of availability of Authority Data due to any failure or compromise of the Goods and/or Services.

3. SECURITY PLAN

3.1 Introduction

3.1.1 The Contractor shall develop, implement and maintain a Security Plan to apply during the term of the Contract (and after the end of the term as applicable) which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule.

3.1.2 A draft Security Plan provided by the Contractor as part of its bid is set out herein.

3.2 Development

3.2.1 Prior to the Commencement Date, the Contractor will prepare and deliver to the Authority for approval the full and final Security Plan which will be based on the draft Security Plan set out herein.

3.2.2 If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Contractor shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit to the Authority for approval. The Parties

will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with Condition I2 (Dispute Resolution) of the General Terms and Conditions (Section 3). No approval to be given by the Authority pursuant to this paragraph 3.2.2 of this Schedule may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 3.1.1 to 3.3.5 shall be deemed to be reasonable.

3.3 Content

- 3.3.1 The Security Plan will set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Goods and/or Services and all processes associated with the delivery of the Goods and/or Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Goods and/or Services comply with:
 - 3.3.1.1 the provisions of this Schedule (including the principles set out in paragraph 2);
 - 3.3.1.2 the provisions of Schedule 2 (Specification Schedule) relating to security;
 - 3.3.1.3 Information Assurance Standards;
 - 3.3.1.4 the data protection compliance guidance produced by the Authority;
 - 3.3.1.5 the minimum set of security measures and standards required where the system will be handling Protectively Marked or sensitive information, as determined by the HMG Security Policy Framework;
 - 3.3.1.6 any other extant national information security requirements and guidance, as provided by the Authority's IT security officers; and
 - 3.3.1.7 appropriate ICT standards for technical countermeasures which are included in the Contractor System.
- 3.3.2 The references to Quality Standards, guidance and policies set out in this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such Quality Standards, guidance and policies, from time to time.
- 3.3.3 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Contractor should notify the Authorised Authority Representative of such inconsistency immediately upon becoming aware of the same, and the Authorised Authority Representative shall, as soon as

practicable, advise the Contractor which provision the Contractor shall be required to comply with.

3.3.4 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001, cross-referencing if necessary to other schedules of this Contract which cover specific areas included within that standard.

3.3.5 The Security Plan shall be written in plain English in language which is readily comprehensible to the staff of the Contractor and the Authority engaged in the Goods and/or Services and shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this Schedule.

4. AMENDMENT AND REVISION

4.1 The Security Plan will be fully reviewed and updated by the Contractor annually or from time to time to reflect:

4.1.1 emerging changes in Good Industry Practice;

4.1.2 any change or proposed change to the Contractor System, the Goods and/or Services and/or associated processes;

4.1.3 any new perceived or changed threats to the Contractor System;

4.1.4 changes to security policies introduced Government-wide or by the Authority; and/or

4.1.5 a reasonable request by the Authority.

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

4.3 Any change or amendment which the Contractor proposes to make to the Security Plan (as a result of an Authority request or change to Schedule 2 (Specification Schedule) or otherwise) shall be subject to a Change Control Note and shall not be implemented until approved in writing by the Authority.

5. AUDIT AND TESTING

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

5.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Contractor shall provide the Authority with the results of such tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.

- 5.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Contract, the Authority shall be entitled at any time and without giving notice to the Contractor to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Contractor's compliance with and implementation of the Security Plan. The Authority may notify the Contractor of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Goods and/or Services.
- 5.4 Where any Security Test carried out pursuant to paragraphs 5.2 or 5.3 above reveals any actual or potential security failure or weaknesses, the Contractor shall promptly notify the Authority of any changes to the Security Plan (and the implementation thereof) which the Contractor proposes to make in order to correct such failure or weakness. Subject to the Authority's approval in accordance with paragraph 4.3, the Contractor shall implement such changes to the Security Plan in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the HMG Security Policy Framework or security requirements, the change to the Security Plan shall be at no additional cost to the Authority. For the purposes of this paragraph, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

6. COMPLIANCE WITH THE INFORMATION ASSURANCE STANDARDS

- 6.1 The Contractor shall obtain independent verification that the Security Plan complies with the Information Assurance Standards as soon as reasonably practicable and will maintain such compliance for the duration of the Contract.
- 6.2 The Contractor shall carry out such regular security audits as may be required in order to maintain compliance with the Information Assurance Standards. The Contractor shall promptly provide to the Authority any associated security audit reports and shall otherwise notify the Authority of the results of such security audits.
- 6.3 If it is the Authority's reasonable opinion that compliance with the Information Assurance Standards are not being achieved by the Contractor, then the Authority shall notify the Contractor of the same and give the Contractor a reasonable time (having regard to the extent of any non-compliance and any other relevant circumstances) to become compliant. If the Contractor does not become compliant within the required time then the Authority has the right to obtain an independent audit against these standards in whole or in part.
- 6.4 If, as a result of any such independent audit, the Contractor is found to be non-compliant with the Information Assurance Standards then the Contractor

shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

7. BREACH OF SECURITY

- 7.1 Either Party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.
- 7.2 Upon becoming aware of any of the circumstances referred to in paragraph 7.1, the Contractor shall immediately take all reasonable steps necessary to:
 - 7.2.1 remedy such breach or protect the Contractor System against any such potential or attempted breach or threat; and
 - 7.2.2 prevent an equivalent breach in the future.
- 7.3 Such steps shall include any action or changes reasonably required by the Authority. In the event that such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Contractor under this Contract, then the Contractor shall be entitled to refer the matter to the Change Control procedure set out in Schedule 4.
- 7.4 The Contractor shall as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as may be specified by the Authority from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

APPENDIX 1
OUTLINE SECURITY PLAN

APPENDIX 2

SECURITY POLICY: 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 8

BUSINESS CONTINUITY AND DISASTER RECOVERY

DEFINITIONS

For the purposes of this Schedule 9, unless the context otherwise requires the following provisions shall have the meanings given to them below:

- (a) "Business Continuity and Disaster Recovery Plan" means any plan set out in this Schedule 9 as may be amended from time to time.
- (b) "Disaster Recovery" means the process of restoration of the Services by the provision of the Disaster Recovery Services.
- (c) "Disaster Recovery Services" means the disaster recovery and/or business continuity services (as the context may require) to be provided by the Contractor pursuant to this Schedule 9.
- (d) "Disaster Recovery System" means the system identified by the Contractor which shall be used for the purpose of delivering the Disaster Recovery Service.
- (e) "Related Service Provider" any person who provides services to the Authority in relation to the Services from time to time.

1. PURPOSE OF THIS SCHEDULE

- 1.1 This Schedule sets out the Authority's requirements for ensuring continuity of the business processes and operations supported by the Services in circumstances of service disruption or failure and for restoring the Services through business continuity and as necessary disaster recovery procedures. It also includes the requirement on the Contractor to develop, review, test, change, and maintain a Business Continuity and Disaster Recovery Plan (BCDR Plan) in respect of the provision of Services.
- 1.2 For the purposes of this Contract, "Disaster" means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of it will be unavailable for the period set out in Schedule 2 or which is reasonably anticipated will mean that the Services or a material part will be unavailable for that period.
- 1.3 The BCDR Plan shall be divided into 3 parts:
 - 1.3.1 Part A which shall set out general principles applicable to the BCDR Plan ("General Principles");

1.3.2 Part B which shall relate to business continuity ("Business Continuity Plan"); and

1.3.3 Part C which shall relate to disaster recovery ("Disaster Recovery Plan").

1.4 The BCDR Plan shall detail the processes and arrangements which the Contractor shall follow to ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services and the recovery of the Services in the event of a Disaster.

2. DEVELOPMENT OF BCDR PLAN

2.1 The BCDR Plan shall unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5 of this Schedule 9.

2.2 The Contractor shall ensure that its Sub-Contractors' disaster recovery and business continuity plans are integrated with the BCDR Plan.

3. PART A - GENERAL PRINCIPLES AND REQUIREMENTS

3.1 The BCDR Plan shall:

3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;

3.1.2 provide details of how the implementation of any element of the BCDR Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider and/or by a Sub-Contractor to the Contractor;

3.1.3 contain an obligation upon the Contractor to liaise with the Authority and (at the Authority's request) any Related Service Provider and/or Sub-Contractor with respect to issues concerning business continuity and disaster recovery where applicable;

3.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Authority and any of its other Related Service Providers as notified to the Contractor by the Authority from time to time;

3.1.5 where required by the Authority, contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;

3.1.6 contain a risk analysis, including:

- 3.1.6.1 identification of any single points of failure within the Goods and/or Services and processes for managing the risks arising therefrom;
 - 3.1.6.2 identification of risks arising from the interaction of the Goods and/or Services with the services provided by a Related Service Provider and/or a Sub-Contractor;
 - 3.1.6.3 a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
 - 3.1.6.4 where required by the Authority, failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - 3.1.7 provide for documentation of processes, including business processes, and procedures;
 - 3.1.8 set out key contact details (including roles and responsibilities) for the Contractor (and any Sub-Contractors) and for the Authority;
 - 3.1.9 identify the procedures for reverting to "normal service";
 - 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that the data loss does not exceed the amount set out in Schedule 2 (Specification Schedule) and to preserve data integrity;
 - 3.1.11 identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and
 - 3.1.12 provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority's business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
- 3.2.1 it complies with the relevant provisions of BS25999 or equivalent and all other applicable Quality Standards from time to time in force;
 - 3.2.2 the Services are provided in accordance with the Contract at all times during and after the invocation of the BCDR Plan;
 - 3.2.3 the adverse impact of any Disaster, service failure, or disruption on the operations of the Authority is minimal as far as reasonably possible;
 - 3.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.

- 3.3 The BCDR Plan must be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.
- 3.4 The Contractor shall not be entitled to any relief from its obligations or to any increase in the Contract Price to the extent that a Disaster occurs as a consequence of any breach by the Contractor of this Contract.

4. PART B - BUSINESS CONTINUITY ELEMENT - PRINCIPLES AND CONTENTS

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Goods and/or Services remain supported and to ensure continuity of the business operations supported by the Goods and/or Services including but not limited to and unless the Authority expressly states otherwise in writing:
- 4.1.1 the alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
 - 4.1.2 the steps to be taken by the Contractor upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2 The Business Continuity Plan shall address the various possible levels of failures of or disruptions to the Services and the services to be provided and the steps to be taken to remedy the different levels of failure and disruption. The Business Continuity Plan shall also clearly set out the conditions and/or circumstances under which the Disaster Recovery Plan is invoked.

5. PART C - DISASTER RECOVERY ELEMENT - PRINCIPLES AND CONTENTS

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Contractor ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall only be invoked upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
- 5.3.1 the technical design and build specification of the Disaster Recovery System;
 - 5.3.2 details of the procedures and processes to be put in place by the Contractor and any Sub-Contractor in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:

- 5.3.2.1 data centre and disaster recovery site audits;
- 5.3.2.2 backup methodology and details of the Contractor's approach to data back-up and data verification;
- 5.3.2.3 identification of all most likely disaster scenarios;
- 5.3.2.4 risk analysis;
- 5.3.2.5 documentation of processes and procedures;
- 5.3.2.6 hardware configuration details;
- 5.3.2.7 network planning including details of all relevant data network communication links;
- 5.3.2.8 invocation rules;
- 5.3.2.9 service recovery procedures;
- 5.3.2.10 steps to be taken upon Service resumption to address any prevailing effect of the Services failure or disruption;
- 5.3.3 any applicable service levels with respect to the provision of Disaster Recovery Services and details of any agreed relaxation upon the service levels during any period of invocation of the Disaster Recovery Plan;
- 5.3.4 details of how the Contractor shall ensure compliance with Schedule 8 (Security Requirements, Policy and Plan) ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 5.3.5 access controls (to any disaster recovery sites used by the Contractor or any Sub-Contractor in relation to its obligations pursuant to this Schedule); and
- 5.3.6 training of staff, testing and management arrangements.

6. REVIEW AND AMENDMENT OF THE BCDR PLAN

- 6.1 The Contractor shall review part or all of the BCDR Plan (and the risk analysis on which it is based):
 - 6.1.1 regularly and at least once every 6 calendar months;
 - 6.1.2 within 3 calendar months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 8 of this Schedule;
 - 6.1.3 where the Authority requests any additional reviews (over and above those provided for in paragraphs 6.1.1 and 6.1.2 of this Schedule) by notifying the Contractor to such effect in writing, whereupon the Contractor shall conduct

such reviews in accordance with the Authority's written requirements. The costs of both Parties for any such additional reviews will be met by the Authority; and

6.1.4 where the Authority requests an independent review of the Contractor's BCDR Plan or a Sub-contractor's BCDR Plan, the Contractor shall afford the Authority or the Authority's representatives such access to the Premises as may be required to review those records and processes as may be requested by the Authority in connection with the BCDR.

6.2 Each review pursuant to paragraph 6.1 of the BCDR Plan shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Contractor within the period required by the BCDR Plan or if no such period is required within such period as the Authority shall reasonably require. The Contractor shall, within 20 Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report ("Review Report") setting out:

6.2.1 the findings of the review;

6.2.2 any changes in the risk profile associated with the Services; and

6.2.3 the Contractor's proposals ("Contractor's Proposals") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Contractor can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

6.3 The Contractor shall as soon as is reasonably practicable after receiving the Authority's approval of the Contractor's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Contractor's Proposals. Any such change shall be at the Contractor's expense unless it can be reasonably shown that the changes are required because of a material change to the project's risk profile.

7. TESTING OF THE BCDR PLAN

7.1 The Contractor shall test the BCDR Plan regularly and at least once each contract year). Subject to paragraph 7.2, the Authority may require the Contractor to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.

- 7.2 If the Authority requires an additional test of the BCDR Plan it shall give the Contractor written notice and the Contractor shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDR Plan. The Contractor's costs of the additional test shall be borne by the Authority unless the BCDR Plan fails the additional test in which case the Contractor's costs of that failed test shall be borne by the Contractor.
- 7.3 Following each test, the Contractor shall send to the Authority a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Authority considers to be necessary as a result of those tests.
- 7.4 The Contractor shall undertake and manage testing of the BCDR Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
- 7.5 The Contractor shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 7.6 The Contractor shall, within 20 Working Days of the conclusion of each test, provide to the Authority a report setting out:
- 7.6.1 the outcome of the test;
 - 7.6.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 7.6.3 the Contractor's proposals for remedying any such failures.
- 7.7 Following each test, the Contractor shall take all measures requested by the Authority, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Contractor, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 7.8 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Contractor of any of its obligations under this Schedule 9 or otherwise.
- 7.9 The Contractor shall also perform a test of the BCDR Plan as part of the commissioning of any new project.

8. INVOCATION OF THE BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN

- 8.1 If there is a complete loss of service or in the event of a Disaster, the Contractor shall immediately invoke the BCDR Plan (and shall inform the Authority promptly of such invocation). In all other instances the Contractor shall only invoke or test the BCDR Plan with the prior consent of the Authority.

APPENDIX C

COMMERCIALLY SENSITIVE INFORMATION

TENDERER'S COMMERCIALLY SENSITIVE INFORMATION	POTENTIAL IMPLICATION OF DISCLOSURE	DURATION OF COMMERCIALLY SENSITIVE INFORMATION