



Department
for Environment
Food & Rural Affairs

FRAMEWORK AGREEMENT FOR THE PROVISION OF VALUATION SERVICES

REF: 29577

between

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

and

[REDACTED]

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THIS AGREEMENT is dated 08/10/2020

PARTIES

- (1) THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS at 17 Smith Square, London, SW1P 3JR (**Authority**).
- (2) [REDACTED]
[REDACTED]
[REDACTED]

BACKGROUND

- (A) The Authority placed a contract notice 2020/S 138-340811 on 20/07/2020 in the Official Journal of the European Union seeking expressions of interest from potential service providers for the provision of Services (divided into Lots) to itself and the Other Contracting Bodies identified in the contract notice under a framework agreement.
- (B) The Authority invited any potential service providers (including the Contractor) on 16/07/2020 to tender for the provision of Agricultural, Expert and Monitoring Valuation Services.
- (C) On the basis of the Contractor's Tender, the Authority selected the Contractor to enter a framework agreement to provide services to those Customers who place Orders for Lots in accordance with this Framework Agreement.
- (D) This Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of the Services and the obligations of the Contractor under this Framework Agreement.
- (E) It is the Parties' intention that Customers have no obligation to place Orders with the Contractor under this Framework Agreement or at all.
- (F) Execution of the Contract is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Contract is formed on the date on which both Parties communicate acceptance of its terms on the Authority's electronic contract management system ("Bravo").

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this Framework Agreement.

APHA: means the Animal and Plant Health Agency.

Approval: means the prior written approval of the Authority.

Audit: means an audit carried out pursuant to clause 10.

Auditor: means the National Audit Office or an auditor appointed by the Authority as the context requires.

Authorised Representative: means the persons respectively designated as such by the Authority and the Contractor, the first such persons being set out in clause 30.

Authority: means the Department for Environment, Food and Rural Affairs.

Award Criteria: means the Evaluation and Award criteria as set out in the ITT.

Call-off Terms and Conditions: means the terms and conditions in 05.

Change of Control: means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010.

Commencement Date: means 08/10/2020.

Controller: means that given in GDPR

Complaint: means any formal complaint raised by any Customer in relation to the performance under the Framework Agreement or any Contract in accordance with clause 20.

Confidential Information: means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Contractors of the Contractor, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.

Contractors Lot(s): means the lots to which the Contractor has been appointed under this Framework agreement.

Call-off Contract or Contract: means a legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between a Customer and the Contractor comprising the Call-off Terms and Conditions (as may be amended pursuant to clause **Error! Reference source not found.**).

Customer: means the Authority and any other contracting authority (as defined in regulation 2 of the Regulations) described in the OJEU Notice.

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

Data Protection Officer has the meaning given in the GDPR.

Data Subject: has the meaning given in the GDPR.

Data Subject Request: means a request made by, or on behalf of, a Data Subject in accordance with rights

Default: means any breach of the obligations of the relevant Party under a Contract (including 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.

Environmental Information Regulations: mean the Environmental Information Regulations 2004 (*SI 2004/3391*) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

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.

Framework Agreement: means this agreement and all Schedules to this agreement.

Framework Agreement Variation Procedure: means the procedure set out in 6.

Framework Providers: means the Contractor and other Contractors appointed as framework providers under this Framework Agreement.

Framework Year: means a period of 12 months, commencing on the Commencement Date.

Geographic Region: means the geographic area that is defined in the Specification of Requirements.

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

Guidance: means any guidance issued or updated by the UK government from time to time in relation to the Regulations.

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

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

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.

Lots: means the Services divided into lots as referred to in the OJEU Notice and set out in the ITT.

Month: means a calendar month.

OJEU Notice: means the contract notice 2020/S 138-340811 dated 20/07/2020 published in the Official Journal of the European Union.

Order or Order Form: means the form that is sent by the Authority to the Contractor to confirm the details of the requirement in accordance with the award procedures in *clause 4*.

Other Contracting Bodies: means all Customers except the Authority.

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

Party: means the Authority and/or the Contractor.

Personal Data: has the meaning given in the GDPR.

Personal Data Breach: has the meaning given in the GDPR.

Pricing Matrices: means the pricing matrices set out in 04.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;

- (ii) under legislation creating offences concerning fraudulent acts;
- (iii) at common law concerning fraudulent acts relating to this Framework Agreement or any other contract with the Authority;
or
- (d) defrauding, attempting to defraud or conspiring to defraud the Authority.

Processor: has the meaning given in the GDPR.

Regulations: means the Public Contracts Regulations 2015 (*SI 2015/102*).

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 this Framework Agreement or any other affairs of the Authority.

Requests for Information: means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

Services: means the provision of Agricultural, Expert and Monitoring Valuation Services as detailed in 0, part 1.

Staff: means all persons employed by the Contractor together with the Contractor's servants, agents, Contractors and subcontractors used in the performance of its obligations under this Framework Agreement or Contracts.

Subcontract: any contract between the Contractor and a third party pursuant to which the Contractor agrees to source the provision of any of the Services from that third party.

Subcontractor: the contractors or service providers that enter into a Subcontract with the Contractor.

Specification of Requirements: means the Authority's requirements from the Services as set out in Schedule 1, part 1.

Tender: means the tender submitted by the Contractor to the Authority on [REDACTED]

Term: means the period commencing on the Commencement Date and ending on 07/10/2024 or on earlier termination of this Framework Agreement.

Termination Date: means the date of expiry or termination of this Framework Agreement.

Working Days: means any day other than a Saturday, Sunday or public holiday in England and Wales.

Year: means a calendar year.

1.2 The interpretation and construction of this Framework Agreement shall all 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) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- (g) the Schedules form part of this Framework Agreement and shall have effect as if set out in full in the body of this Framework Agreement and any reference to this Framework Agreement shall include the Schedules;
- (h) references in this Framework Agreement to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to this Framework Agreement so numbered;
- (i) references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered; and
- (j) reference to a clause is a reference to the whole of that clause unless stated otherwise.

PART ONE: FRAMEWORK ARRANGEMENTS AND AWARD PROCEDURE

2. TERM OF FRAMEWORK AGREEMENT

The Framework Agreement shall take effect on the Commencement Date and (unless it is terminated in accordance with the terms of this Framework

Agreement or is otherwise lawfully terminated) shall terminate at the end of the Term.

3. SCOPE OF FRAMEWORK AGREEMENT

- 3.1 This Framework Agreement governs the relationship between the Authority and the Contractor in respect of the provision of the Services by the Contractor to Customers.
- 3.2 The Authority appoints the Contractor as a Framework Provider of the Services and the Contractor shall be eligible to enter into a Call-off Contract and receive Orders for such Services from Customers during the Term.
- 3.3 Customers may at their absolute discretion and from time to time order Services from the Contractor in accordance with the ordering procedure set out in clause 4 during the Term. The Parties acknowledge and agree that the Other Contracting Bodies have the right to order Services pursuant to this Framework Agreement provided that they comply at all times with the Regulations and the ordering procedure in *clause 0*. If there is a conflict between *clause 4* and the Regulations, the Regulations shall take precedence.
- 3.4 If and to the extent that any Services under this Framework Agreement are required each and every Customer shall:
- (a) enter into a contract with the Contractor for these Services materially in accordance with the terms of the Contract; and
 - (b) comply with the ordering procedure in *clause 4*.
- 3.5 The Contractor acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Customer for the Services and that the Customer is at all times entitled to enter into other contracts and arrangements with other Contractors for the provision of any or all services which are the same as or similar to the Services.
- 3.6 The Authority shall not in any circumstances be liable to the Contractor or any Other Contracting Body for payment or otherwise in respect of any Services provided by the Contractor to any Other Contracting Body.

4. AWARD PROCEDURES

Awards under the Framework Agreement

- 4.1 The Authority and the Contractor shall enter into a Call-off Contract pursuant to this Framework Agreement. Once the Call-off Contract has been executed by both parties, the Contractor shall then become eligible to deliver the services in the Order form.
- 4.2 In Lots and Geographic Regions where multiple Contractors are appointed, the Authority will allocate Orders using the Selection Methodology as set out in the Specification of Requirements in Schedule 2.

Responsibility for awards

- 4.3 The Contractor acknowledges that each Customer is independently responsible for the conduct of its award of Contracts under the Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
- (a) the conduct of Other Contracting Bodies in relation to the Framework Agreement; or
 - (b) the performance or non-performance of any Contracts between the Contractor and Other Contracting Bodies entered into pursuant to the Framework Agreement.

Form of Order

- 4.4 Subject to clauses 4.1 - 4.3 above, each Customer may place an Order with the Contractor by serving an order in writing in substantially the forms set out in 06-9 or such similar form agreed with the Contractor including systems of ordering involving fax, e-mail or other online solutions.

5. CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS

- 5.1 The Contractor shall perform all Contracts entered into with a Customer in accordance with:
- (a) the requirements of this Framework Agreement; and
 - (b) the terms and conditions of the respective Contracts.
- 5.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Framework Agreement and the terms and conditions of a Contract, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the Contract;
 - (b) the Order Form

- (c) the terms of the Framework Agreement, the Schedules to the Framework Agreement and the Order Form
- (d) any other document referred to in the clauses of the Contract; and
- (e) the Contractor's Tender.

6. PRICES FOR SERVICES

- 6.1 The prices offered by the Contractor shall be based on the prices set out in the Pricing Matrices and tendered in accordance with the Specification of Requirements.
- 6.2 Prices must be submitted in £ Sterling, exclusive of VAT.
- 6.3 The Framework is to be awarded with maximum prices for Valuation Services as set out in Schedule 4 of the specification of Requirements.
- 6.4 Prices may be reviewed by both Parties each year from the Commencement Date to reflect current market conditions. Prices must be reviewed and formally accepted in writing by the Authority before a change in the Pricing Matrices is confirmed.

CONTRACTOR'S GENERAL FRAMEWORK OBLIGATIONS

7. WARRANTIES AND REPRESENTATIONS

The Contractor warrants and represents to the Authority and to each of the Other Contracting Bodies 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 to perform its obligations under this Framework Agreement;
- (b) this Framework Agreement is executed by a duly authorised representative of the Contractor;
- (c) in entering into this Framework Agreement or any Contract it has not committed any Prohibited Act;
- (d) as at the Commencement Date, all information, statements and representations contained in the Tender and the SQ Response are true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority before the execution of this Framework Agreement and it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware during the

Term that would render any such information, statement or representation to be false or misleading;

- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under this Framework Agreement and any Contract which may be entered into with the Authority or Other Contracting Bodies;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Contract; and
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue.

8. SERVICE PRE-REQUISITES

The Contractor shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Framework Agreement and any Contract.

CONTRACTOR'S INFORMATION OBLIGATIONS

9. GOVERNANCE AND CONTRACT MANAGEMENT

- 9.1 APHA will appoint a Contract Manager (CM) responsible for overseeing the Framework Agreement and Call off Contracts for Services on behalf of the Authority.
- 9.2 The Contractor will appoint a corresponding Service Manager (SM).
- 9.3 A strategic review will be held annually depending on the volume of Call off activity, the meeting will review performance over the past year and look ahead to the next year, including strategic and financial issues. Where Call off activity has been light the Authority may choose to issue an online survey.
- 9.4 As part of the annual review, the Contractor will have the opportunity to submit updated Maximum Framework Rates to ensure they are reflective of the latest market conditions. The Contractor's ranking in each Lot will be adjusted accordingly following any changes to the Maximum Framework Rates.

- 9.5 Other ad hoc meetings may be held, at the discretion of the Authority or at the request of the Contractor, throughout the life of the Framework Agreement to discuss specific issues.
- 9.6 The Contractor will be responsible for travel and subsistence costs incurred as a result of attendance at any meeting. Meetings may also be held by teleconference with the agreement of all parties. Annual meetings will be held at the most mutually convenient location if face-to-face or via teleconference.
- 9.7 Annual meetings will be minuted, with secretariat support and actions provided by the Authority, with agreed dates for completion. The Contractor will maintain a joint register of risks, issues and actions.
- 9.8 The CM should ensure that all meeting minutes, risk registers and any other contract documentation is recorded against the Authority's contract records.
- 9.9 Table B gives the purpose of each of these meetings with each Contractor, and the required attendees.

9.10 **Table B. Contract Management Meeting Schedule**

| Meeting | Attendance | Content |
|--|---|---|
| Specific Issues, ad hoc <i>Face-to-face / Telecon</i> | APHA: <ul style="list-style-type: none"> SLO (Chair) and/or DSLO Secretariat support Contractor: <ul style="list-style-type: none"> SM and/or DSM Any other APHA, Authority or Contractor staff needed to progress the issue. NB - The CM or Head of Contract Management may alternatively Chair the meeting if facilitation is required. | <ul style="list-style-type: none"> Urgent issues Specific technical or contractual issues requiring detailed discussion |

| | | |
|--|---|---|
| <p>Annual Review Meeting (if required)</p> <p><i>Face-to-face</i> <i>Telecon</i></p> | <p>APHA:</p> <ul style="list-style-type: none"> • SLO and DSLO • CM • Head of Contract Management (Chair) • Secretariat support • DGC representative (<i>optional, if required</i>) • Head of Service • Welsh & Scottish Government representative (<i>optional, if required</i>) <p>Contractor:</p> <ul style="list-style-type: none"> • SM and/or DSM • Any other representative that the Contractor feels relevant from within their organisation | <ul style="list-style-type: none"> • Annual Service Review • Risks and issues log • Specific service issues (including any escalated issues) • Service wide issues • Financial update • Strategic Overview (including any policy updates) |
|--|---|---|

10. RECORDS AND AUDIT ACCESS

- 10.1 The Contractor shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Services provided under it, the Contracts entered into with Customers and the amounts paid by each Customer.
- 10.2 The Contractor shall keep the records and accounts referred to in clause 10.1 above in accordance with good accountancy practice.
- 10.3 The Contractor shall afford the Authority or the Auditor (or both) such access to such records and accounts as may be required from time to time.

- 10.4 The Contractor shall provide such records and accounts (together with copies of the Contractor's published accounts) during the Term and for a period of six years after expiry of the Term to the Authority (or relevant Customer) and the Auditor.
- 10.5 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Contractor or delay the provision of the Services pursuant to the Contracts, save insofar as the Contractor accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Authority.
- 10.6 Subject to the Authority's rights of confidentiality, the Contractor shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
- (a) all information requested by the Auditor within the scope of the Audit;
 - (b) reasonable access to sites controlled by the Contractor and to equipment used in the provision of the Services; and
 - (c) access to the Staff.
- 10.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 10, unless the Audit reveals a Material Default by the Contractor in which case the Contractor shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the Audit.

11. CONFIDENTIALITY

- 11.1 Subject to clause 11.2, the Parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 11.2 Clause 11.1 shall not apply to any disclosure of information:
- (a) required by any applicable law
 - (b) that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Framework Agreement;
 - (c) that is reasonably required by Other Contracting Bodies;

- (d) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 11.1;
- (e) by the Authority of any document to which it is a party and which the Parties to this Framework Agreement have agreed contains no Confidential Information;
- (f) to enable a determination to be made under clause 21;
- (g) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
- (h) by the Authority to any other department, office or agency of the government, provided that the Authority informs the recipient of any duty of confidence owed in respect of the information; and
- (i) by the Authority relating to this Framework Agreement and in respect of which the Contractor has given its prior written consent to disclosure.

12. OFFICIAL SECRETS ACTS

- 12.1 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.
- 12.2 In the event that the Contractor or its Staff fail to comply with this clause 12, the Authority reserves the right to terminate this Framework Agreement with immediate effect by giving notice in writing to the Contractor.

13. DATA PROTECTION

- 13.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 7. The only processing that the Contractor is authorised to do is listed in Schedule 7 by the Authority and may not be determined by the Contractor.
- 13.2 The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

13.3 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

13.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with Schedule 7 unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that :
 - (i) the Staff do not process Personal Data except in accordance with this Contract (and in particular Schedule 7);

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

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

(B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;

(C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and

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

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

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

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

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

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

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

- 13.5 Subject to clause 25.6 the Contractor shall notify the Authority immediately if, in relation to any Personal Data processed in connection with its obligations under this Contract, it:
- (a) receives a Data Subject Request (or purported Data Subject Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority;
 - (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 13.6 The Contractor's obligation to notify under clause E25.5 shall include the provision of further information to the Authority in phases, as details become available.
- 13.7 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Contract and any complaint, communication or request made under Clause E25.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
- (a) the Authority with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the Authority following any Data Loss Event;

(e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

13.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

(a) the Authority determines that the processing is not occasional;

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

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

13.9 The Contractor shall allow for audits of its Personal Data processing activity by the Authority or the Authority's designated auditor.

13.10 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.

13.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:

(a) notify the Authority in writing of the intended Sub-processor and processing;

(b) obtain the written consent of the Authority;

(c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause E2 such that they apply to the Sub-processor; and

(d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

- 13.12 The Contractor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 13.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 13.14 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Officer.
- 13.15 This clause 25 shall apply during the Contract Period and indefinitely after its expiry.

14. FREEDOM OF INFORMATION

- 14.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Contractor shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.
- 14.2 The Contractor acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Contractor. The Authority shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be

responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

15. PUBLICITY

- 15.1 Unless otherwise directed by the Authority, the Contractor shall not make any press announcements or publicise this Framework Agreement in any way without the Authority's prior written consent.
- 15.2 The Authority shall be entitled to publicise this Framework Agreement in accordance with any legal obligation on the Authority, including any examination of this Framework Agreement by the Auditor or otherwise.
- 15.3 The Contractor shall not do anything that may damage the reputation of the Authority or bring the Authority into disrepute.

16. GUARANTEE

On the Authority's request and at the request of each Other Contracting Body, the Contractor shall procure that the Guarantor shall:

- (a) execute and deliver to the Authority or the relevant Other Contracting Body the Guarantee;
- (b) deliver to the Authority or Other Contracting Body a certified copy extract of the board minutes of the Guarantor approving the execution of the Guarantee.

FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION

17. TERMINATION

Termination on Default

- 17.1 The Authority may terminate the Framework Agreement by serving written notice on the Contractor with effect from the date specified in such notice:
 - (a) where the Contractor commits a material breach and:
 - (i) the Contractor has not remedied the material breach to the satisfaction of the Authority within 20 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the material breach and requesting it to be remedied; or

- (ii) the material breach is not, in the reasonable opinion of the Authority, capable of remedy; or
- (b) where any Customer terminates a Contract awarded to the Contractor under this Framework Agreement as a consequence of a material breach by the Contractor;
- (c) any warranty given by the other party in clause 7 of this agreement is found to be untrue or misleading;
- (d) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

17.2 For the purposes of clause 17.1(a), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

- (a) a substantial portion of this agreement; or
- (b) any of the material obligations set out in this agreement,
over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

Termination on insolvency and Change of Control

17.3 Without affecting any other right or remedy available to it, the Authority may terminate this agreement with immediate effect by giving [written] notice to the Contractor if:

- (a) the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Contractor with one or more other companies or the solvent reconstruction of the Contractor;

- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Contractor (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Contractor (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Contractor (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor;
- (g) the Contractor (being an individual) is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.3(a) to clause 17.3(h) (inclusive); or
- (j) the Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

17.4 The Contractor shall notify the Authority immediately if the Contractor undergoes a Change of Control. The Authority may terminate the Framework Agreement by giving notice in writing to the Contractor with immediate effect within six Months of:

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

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

Termination by Authority for convenience

- 17.5 The Authority shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving one (1) months written notice to the Contractor. The Parties acknowledge that if the Authority exercises its rights under this clause 17.5 it shall exercise its equivalent rights under all agreements with the Framework Providers.

18. SUSPENSION OF CONTRACTOR'S APPOINTMENT

- 18.1 Without prejudice to the Authority's rights to terminate the Framework Agreement in clause 17 above, if a right to terminate this Framework Agreement arises in accordance with clause 17, the Authority may suspend, with immediate effect, the Contractor's right to receive Orders from Customers in any or all Contractor's Lots by giving notice in writing to the Contractor. If the Authority provides notice to the Contractor in accordance with this clause 18, the Contractor's appointment shall be suspended for the period set out in the notice or such other period notified to the Contractor by the Authority in writing from time to time.
- 18.2 Further to clause 18.1 above, in the event that the Authority suspends the Contractor's right to receive Orders, the Authority shall specify a reason for such suspension.
- 18.3 Whilst the Authority will endeavour to give the Contractor as much notice of a suspension as possible, certain circumstances may prevent such notice from being given and a suspension may take effect immediately from the date and time of notification to the Contractor.
- 18.4 Further to clause 18.3 above, notification to suspend the Contractor's right to receive Orders may be issued by the Authority verbally and followed up in writing as soon as reasonably practicable thereafter in which case, notification shall be deemed to be provided at the time it is verbally communicated to the Contractor.

19. CONSEQUENCES OF TERMINATION AND EXPIRY

- 19.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Contractor shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this clause 19.
- 19.2 Unless expressly stated to the contrary, the service of a notice to terminate the Framework Agreement shall not operate as a notice to terminate any Contract

made under the Framework Agreement. Termination or expiry of the Framework Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

- 19.3 Within 30 Working Days of the date of termination or expiry of the Framework Agreement, the Contractor shall return or destroy at the request of the Authority any data, personal information relating to the Authority or its personnel or Confidential Information belonging to the Authority in the Contractor's possession, power or control, either in its then current format or in a format nominated by the Authority (in which event the Authority will reimburse the Contractor's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information for a period of up to 12 Months to comply with its obligations under the Framework Agreement, or such period as is necessary for such compliance.
- 19.4 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement before termination or expiry.
- 19.5 The provisions of clause 7, clause 10, clause 11, clause 12, clause 13, clause 14, clause 15, clause 19, clause 22, and clause 31 shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

20. COMPLAINTS HANDLING AND RESOLUTION

- 20.1 The Contractor shall notify the Authority of any Complaint made by Other Contracting Bodies within two Working Days of becoming aware of that Complaint and such notice shall contain full details of the Contractor's plans to resolve such Complaint.
- 20.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Framework Agreement or a Contract, and without prejudice to any obligation of the Contractor to take remedial action under the provisions of the Framework Agreement or a Contract, the Contractor shall use its best endeavours to resolve the Complaint within ten Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

21. DISPUTE RESOLUTION

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

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

21.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under clause 31 which clause shall apply at all times.

21.3 If the Dispute is not resolved within 90 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 90 days, or the mediation terminates before the expiration of the said period of 90 days, the Dispute shall be finally resolved by the courts of England and Wales arbitration proceedings in accordance with clause 31 in this Agreement.

GENERAL PROVISIONS

22. PREVENTION OF BRIBERY

22.1 The Contractor:

- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Framework Agreement and any Contract made under it commit a Prohibited Act; and
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that an agreement has been reached to that effect, in connection with the execution of this Framework Agreement, excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of this Framework Agreement.

22.2 The Contractor shall:

- (a) if requested, provide the Customer with any reasonable assistance, at the Customer's reasonable cost, to enable the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
- (b) within 30 Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing (such certification to be signed by an officer of the Contractor) compliance with this clause 22 by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Framework Agreement. The Contractor shall provide such supporting evidence of compliance as the Customer may reasonably request.

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

22.4 If any breach of clause 22.1 is suspected or known, the Contractor must notify the Customer immediately.

22.5 If the Contractor notifies the Customer that it suspects or knows that there may be a breach of clause 22, the Contractor must respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit books, records and any other relevant documents. This obligation shall continue for 6 years following the expiry or termination of this Framework Agreement.

22.6 The Customer may terminate this Framework Agreement by written notice with immediate effect if the Contractor, its Staff or Sub-Contractors (in all cases whether or not acting with the Contractor's knowledge) breaches clause 22.1. In determining whether to exercise the right of termination under this clause 22.6, the Customer shall give all due consideration, where appropriate, to action other than termination of this Framework Agreement unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, Sub-Contractor or Contractor not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting:

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

22.7 Any notice of termination under clause 22.6 must specify:

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

22.8 Despite clause 21, any dispute relating to:

- (a) the interpretation of this clause 22; or
 - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Customer and its decision shall be final and conclusive.

22.9 Any termination under this clause 22 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer.

23. SUBCONTRACTING AND ASSIGNMENT

23.1 Subject to clause 23.2 and clause 23.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Framework Agreement without the prior written consent of the other party, neither may the Contractor subcontract the whole or any part of its obligations under this Framework Agreement except with the express prior written consent of the Authority.

- 23.2 The Authority shall be entitled to novate the Framework Agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.
- 23.3 Provided that the Authority has given prior written consent, the Contractor shall be entitled to novate the agreement where:
- (a) the specific change in Contractor was provided for in the procurement process for the award of this agreement;
 - (b) there has been a universal or partial succession into the position of the Contractor, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

24. VARIATIONS TO FRAMEWORK AGREEMENT

Any variations to the Framework Agreement must be made only in accordance with the Framework Agreement Variation Procedure set out in 08.

25. THIRD PARTY RIGHTS

- 25.1 Except as provided otherwise, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 25.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

26. SEVERANCE

- 26.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 26.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal,

valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

27. RIGHTS AND REMEDIES

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

28. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

29. ENTIRE AGREEMENT

29.1 This Framework Agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter, provided that nothing in this clause 29 shall operate to exclude any liability for fraud.

29.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Framework Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation (or negligent misstatement) based on any statement in this Framework Agreement.

30. NOTICES

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

30.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by e-mail (confirmed (in either case) by letter). Such letters shall be addressed to the other Party in the manner referred to in

clause 30.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours, in the case of e-mail or fax or sooner where the other Party acknowledges receipt of such letters, or fax or e-mail.

30.3 For the purposes of clause 30.2, the address of each Party shall be:

(a) For the Authority:

The APHA Contract Manager

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

For the attention of: David Price

Tel: 0208 225 84 62

E-mail: contractmanagement@apha.gov.uk

(b) For the Contractor:

[REDACTED]
[REDACTED]

For the attention of: [REDACTED]

Tel: [REDACTED]

E-mail: [REDACTED]

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

31. GOVERNING LAW AND JURISDICTION

31.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

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

Schedule 1 – Specification of Requirements (Services)

GLOSSARY

Unless the context otherwise requires, the following words and expressions used within this Specification of Requirements shall have the following meanings (to be interpreted in the singular or plural as the context requires):

| TERM | MEANING |
|--|--|
| “Affected Premises / AP” | means ‘Affected Premises’ which are subject to a notice of the Secretary of State/Scottish Ministers/Welsh Ministers declaring it to be either infected with a disease (Infected Premises) or where there is a strong suspicion that an Exotic Notifiable Disease may be present. Entry and exit restrictions are likely to apply. |
| “APHA” | means the Animal and Plant Health Agency, an Executive Agency of the Authority. |
| “Authority” | means the Department for Environment, Food and Rural Affairs acting as part of the Crown. |
| “Authority’s Authorised Representative” | means an authorised representative nominated by the Authority or Contracting Body or APHA. |
| “Bravo” | means the e-Tendering system used by the Authority for conducting this procurement, which can be found at http://defra.bravosolution.co.uk |
| “Call-Off Contract” | means a contract awarded by a Contracting Body using the Framework. |
| “Conflict of Interest” | means an actual or potential conflict of interest on the part of the Tenderer in connection with the ITT or the Framework. |
| “Contracting Body” | means the Authority and any other contracting bodies described in the OJEU Notice published 20/07/2020, entitled to order Services under the Framework. For the purposes of this Framework, this includes the Scottish Government and Welsh Government. |
| “Contractor” | means the successful Tenderer(s) who will be a party to the Framework Agreement responsible for supplying the Services. |
| “Cyber Essentials” | means Cyber Essentials is a Government-backed, industry-supported scheme to help organisations protect themselves against common online threats. |
| “Daily Routine Functions” | means any requirement for a valuation that does not involve an Incident or Outbreak and has a suitable lead in time for the Service. |
| “EIR/EIRs” | means the Environmental Information Regulations 2004/ Environmental Information (Scotland) Regulations 2004 (as amended) together with any guidance and/or codes of practice issued by the Information Commissioner or any Government Department in relation to those Regulations. |
| “Exceptional Circumstances” | means an event deemed solely by the Authority as not falling within the definition of Force Majeure but prevents |

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|---------------------------------|---|
| | normal operation of the business. (For example, failure of the first method of slaughter or utility failures, and others at the sole discretion of the Authority). |
| “FOIA/FOISA” | means the Freedom of Information Act 2000/ Freedom of Information (Scotland) Act 2000 (as amended) and any subordinate legislation made under that Act together with any guidance and/or codes of practice issued by the Information Commissioner or any Government Department in relation to that legislation. |
| “Framework” | means the agreement to be entered into by the Authority and the Tenderers who are awarded a place on the Framework. |
| “Geographical Region(s)” | means the Geographical Regions as specified in Table 1 within Section 2 of the Specification of Requirements. |
| “Incident” | means an occasion, which may or may not include an occurrence of Exotic Notifiable Disease, where the Services may be required at short notice (for example within six (6) to twelve (12) hours). |
| “Information” | means the information contained in the ITT or sent with it, and any information which has been made available to the Tenderer by the Authority, its employees, agents or advisers in connection with the procurement. |
| “the ITT” | means this invitation to tender document and all related documents published by the Authority and made available to Tenderers. |
| “Keeper” | means any person who owns or is responsible for farmed livestock animals on behalf of the owner whether on a permanent or temporary basis, but it does not include a person responsible for an animal solely because they are transporting it. |
| “Livestock Premises” | Means the Premises that BAU Services are required. |
| “Lot(s)” | means Services divided into lots as described at Section 2 of the Specification of Requirements. |
| “Outbreak” | means an occurrence of Exotic Notifiable Disease at one or more premises. |
| “Order / Order Form” | means the form that is sent or the request that is made to the Contractor to confirm the Service required. |
| “PPE” | means Personal Protective Equipment |
| “Pricing Schedule” | means the form accessed via Bravo in which Tenderers are required to submit their pricing information as part of a Tender. |
| “Quarantine Fee” | means a fee that may be paid by a Contracting Body to the Contractor for the required period of quarantine during an outbreak after the provision of the Services. |
| “Response” | means the information submitted in response to the ITT via the online response forms on Bravo including the Tenderer’s formal Tender. |
| “RPE” | means Respiratory Protective Equipment |
| “Selection Methodology” | means the process by which a Contracting Body will place Orders with and award Call-Off Contracts to a Contractor as set out in Schedule 2 of the Specification of Requirements. |

| | |
|--|---|
| “Service(s)” | means Services as described in the Specification of Requirements |
| “Specification of Requirements” | means the Authority’s requirements as set out in Section 3 of the ITT. |
| “TB” | means Tuberculosis. |
| “Tender” | means the formal offer to provide the goods or Services described in the Specification of Requirements and comprising the responses to the questions in Bravo and the Pricing Schedule. |
| “Tenderer” | means anyone responding to the ITT and, where the context requires, includes a potential tenderer. |
| “Urgent” | means where a response is needed within 24 hours. |
| “Valuer” | means a professional with experience in valuing and selling livestock supplied by the Contractor |
| “Working Day” | means any day other than a weekend or Bank Holiday in England, Wales or Scotland. |
| “Working Week” | means Monday to Friday, excluding Public Holidays. |

References to a “Section”, “Annex” and to an “Appendix” are references to a section and to an appendix to this Specification.

Reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1. BACKGROUND TO THE REQUIREMENT

- 1.1. The Animal and Plant Health Agency (APHA) is an Executive Agency of the Authority and delivers the Animal Health and Welfare policies of the Authority, Scottish Government and Welsh Government across Great Britain (GB). One of its principal functions is the safeguarding of animal health and welfare and public health, which in turn supports economic growth and trade.
- 1.2. APHA has a critical role in the control and eradication of endemic and infectious diseases through both, Daily Routine work Functions, involving bovine tuberculosis (TB) and responding to outbreaks and incidents, for example Notifiable Avian Disease. APHA and other GB government (central, devolved and local authorities) may have a need to employ a range of Contractors to deliver certain types of work on its behalf.
- 1.3. Although the UK has voted to leave the EU, and the Government has begun the exit process, EU legislation will continue to be implemented in the UK until the formal date of exit. Contractors should note the possibility of amendments to relevant legislation and the potential impact on delivery of the Services within this requirement.
- 1.4. The Welsh Government is undertaking a review of TB compensation in Wales, therefore TB valuation call-offs for Region 2 will not be award until at least October 2021. The review may also lead to some minor changes to requirements and these will be communicated to the Contractor during the framework period.

2. SCOPE OF THE REQUIREMENT

2.1. This Framework Agreement is for the provision of valuation Services across Geographical Regions in GB for daily routine functions and as part of a response to an Outbreak or Incident.

2.2. The Services required are separated into three (3) lots as set out in the Technical Requirements:

- 2.2.1. Agricultural Valuation Services (Lot 1);
- 2.2.2. Expert Valuation Services (Lot 2);
- 2.2.3. Monitor Valuation Services (Lot 3).

2.3. This Framework agreement is divided in to twelve (12) Geographical Regions as set out below.

| Region Number | | |
|--------------------|----------------------------------|--|
| REGION 1 a) | Scotland Island | Eilean Siar (Western Isles), Shetland Islands, Orkney Islands, (and all other islands: Skye, Arran, Bute etc) |
| REGION 1 b) | Scotland Highland | Argyll and Bute (excluding islands), Highland (excluding islands) |
| REGION 1 c) | Scotland North East | Moray, Aberdeen City, Aberdeenshire, Perth and Kinross, Angus, Dundee City |
| REGION 1 d) | Scotland Strathclyde and Central | Glasgow, Renfrewshire, East Renfrewshire Inverclyde, East Dunbartonshire, West Dunbartonshire, Clackmannanshire, North Lanarkshire, South Lanarkshire, Stirling, Falkirk |
| REGION 1 e) | Scotland South East | Fife, Edinburgh, Midlothian, East Lothian, West Lothian, Scottish Borders |
| REGION 1 f) | Scotland South West | North Ayrshire (excluding islands), East Ayrshire, South Ayrshire, Dumfries and Galloway |
| REGION 2 a) | Wales North | Isle of Anglesey, Conwy, Denbighshire, Flintshire, Gwynedd, North Powys (County of Montgomeryshire), Wrexham |
| REGION 2 b) | Wales South | Blaenau Gwent, Bridgend, Caerphilly, Cardiff, Merthyr Tydfil, Monmouthshire, Neath and Port Talbot, Newport, South Powys (counties of Radnorshire and Brecknock), Swansea, Rhondda Cynon Taf, The Vale of Glamorgan, |

| | | |
|--------------------|----------------------|---|
| | | Torfaen, Carmarthenshire, Ceredigion, Pembrokeshire, |
| REGION 3 a) | North England | Cleveland, Cheshire, Cumbria, Durham, Lancashire, Merseyside, Tyne & Wear, Northumberland, Greater Manchester, South Yorkshire, North Yorkshire, West Yorkshire, North Yorkshire, East Riding of Yorkshire |
| REGION 3 b) | Midlands | Oxfordshire, Gloucestershire, Avon, Herefordshire, Worcestershire, Warwickshire, Northamptonshire, Leicestershire, Rutland, West Midlands, Derbyshire, Lincolnshire, Nottinghamshire, Shropshire, Staffordshire |
| REGION 3 c) | South & East England | Bedfordshire, Berkshire, Buckinghamshire, Cambridgeshire, Essex, Hampshire, Isle of Wight, Hertfordshire, Kent, Greater London, Norfolk, Suffolk, Surrey, East Sussex, West Sussex |
| REGION 3 d) | South West England | Somerset, Dorset, Wiltshire, Cornwall, Devonshire, Isles of Scilly |

2.4. Where multiple Contractors are appointed to a Lot in a Geographical Region, Orders will be allocated to Contractors in accordance with the Call Off Methodology described in Schedule 2.

2.5. The Contractor shall, under the terms of the Framework Agreement with the Authority and any Call-Off Contract thereunder, provide the Services as detailed in this Specification of Requirements for the relevant Lot tendered and awarded for and the relevant Call-Off specifications.

2.6. There is no guarantee of work the Contractor should expect volumes to fluctuate due to changes in disease prevalence and Government policy. Moreover, the Framework and any Call-Off Contracts thereunder do not give the Contractor an exclusive right to carry out the Services. The Authority reserves the right to purchase any Services similar to the Services covered by this procurement from any Contractor outside this Framework.

2.7. Where ticked below, the Contractor has been awarded the Lot(s)

| | |
|--|-------------------------------------|
| Lot 1 – Agricultural Valuation Services | <input checked="" type="checkbox"/> |
| Lot 2 – Expert Valuation Services | <input checked="" type="checkbox"/> |
| Lot 3 – Monitor Valuation Services | <input checked="" type="checkbox"/> |

3. TECHNICAL REQUIREMENTS FOR LOT 1

Agricultural Valuation Services

- 3.1. Valuation Services may be required to Service both Daily Routine Functions and Outbreaks. The frequency of use in Daily Routine Work situations may vary over geographic regions, based on the demography of the animal populations or based on the relevant administration's policies. For example, where the greater majority of animals are valued using "table valuations", the requirement for bespoke animal/herd valuations is reduced.
- 3.2. Further information regarding the relevant policy for administering valuations will be provided at the time of call-off. This may include more detailed instructions regarding how the valuation is to be conducted and what considerations the Valuer needs to take. It is expected that as a minimum, a site visit will be required to assess the market value of the items/animals and an independent valuation report prepared.
- 3.3. The Services under this lot will require the Contractor to value agricultural plant and equipment and other property, animal feed/fodder, crops and both pedigree and non-pedigree animals including those from the following species:
- Bovines (where Valuation Rate Cards do not apply)
 - Ovines
 - Porcines
 - Caprines
 - Avians (for species or breeds where Valuation Rate Cards do not apply)
 - Cervines
 - Camelids
 - Equines
 - Canines
 - Felines
 - Ratites

It is possible that the Contractor may also be required to value other species not listed above.

- 3.4. The Valuation Services must be carried out by suitable numbers of appropriately qualified Valuers. The number of Valuers the Contracting Body expects to be needed (based on its estimate of the number of animals/items to be valued) and the timescales in which the valuations need to be performed will be specified at the time of Call-off. The Contractor will be expected to supply the number of Valuers specified to provide the Services.
- 3.5. In order to be eligible to be appointed to the Framework for Lot 1, the Contractor had to be able to demonstrate they can provide the Services of at least one Valuer who meets the following criteria:
- 3.5.1. Has at least two (2) years of current UK professional experience in livestock / animal valuations (which would be specific to the class/species of animal being valued), or in general agricultural valuing. For Region 2 in

Wales for TB valuations, Valuers will need to hold at least eight (8) years of current professional experience in valuing bovine animals;

3.5.2. **and;**

- is registered as a Fellow with the [Central Association of Agricultural Valuers](#) (CAAV), **or;**
- is an Associate or Fellow of [the Institute of Auctioneers and Appraisers in Scotland](#) (IAAS), **or;**
- is an Associate or Fellow with the [Livestock Auctioneers Association](#) (LAA), **or;**
- is a Fellow/Member of the [Royal Institute of Chartered Surveyors](#) (RICS), **or;**
- is a member of an equivalent trade association within the EU; **or;**
- is established and currently maintaining a specialisation in livestock/animal valuations within a practise that operates professionally. Note that individuals or companies that fall into this group (i.e. do not meet one of the above professional registration criteria) may be required to provide evidence of their experience at any time during the life of the Framework.

3.6. Valuers may not, at the same time, also act on behalf of, or be an employee of the Keeper of the animals, with regard to valuation for this purpose. They may not sign such a valuation on the Keeper's behalf nor act on behalf of the Keeper for any purpose in connection with the valuation in question, such as any subsequent dispute or arbitration. However, they may subsequently act on behalf of the Keeper regarding matters unconnected with the compensation payable as a result of this valuation.

3.7. Valuers should not become involved in valuations, disputes or appeals in respect of any farm or livestock in which they, their relatives, partners or close associates or others in the same firm or company have a direct or indirect financial or other interest.

3.8. Valuers can use clerical assistance to support them in performing their role, however this would need to be agreed with the Authority/Contracting Body in advance. The clerical assistant would be subject to the same biosecurity requirements as the Valuer, including post exposure quarantine periods where necessary. The Valuer (and clerical assistant if required) may be accompanied around the AP by a representative of the Authority/Contracting Body to ensure correct bio-security practices are being complied with and valuations are being undertaken correctly, especially in the event of an Outbreak of Incident. This would be stipulated at the time of Call-off.

3.9. The agreed charges payable by the Authority and/or Other Contracting Body for provision of the Services set out in the Call-Off shall be the total amount payable and therefore all overhead costs and other support Services required to enable the Valuers to perform their tasks on site must be included in the pricing for the Service. No additional costs, except Travel and Subsistence, will be payable by the Authority and/or Other Contracting Body for any clerical assistance or other incidental costs of delivering the Services unless expressly stated on the order form.

- 3.10. Valuers are expected to undertake their valuation assessment in as short a period of time as possible, in liaison with the relevant Authority and/or Other Contracting Body's representative. In an Outbreak or Incident, the valuation must not cause undue delay to the culling procedure.
- 3.11. In some instances, Valuers may be required to make valuations post mortem or at a slaughter house before the animal is processed.
- 3.12. At all times, Valuers performing Services on behalf of the Contractor shall remain the responsibility of the Contractor. The Contractor shall comply with all current legislation relating to health and safety of its employees, customers and members of the public, including but not limited to The Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999 and subsequent amendments. It is the Contractor's own responsibility to carry out the necessary risk assessments and introduce control measures to ensure compliance with the foregoing and any other relevant legislation.
- 3.13. The Contractor must ensure all Valuers have a sound awareness of potential health and safety issues on site and shall take steps to manage these appropriately while performing the Services, at the same time complying with all instructions and Health and Safety Guidelines issued by the Contracting Body and/or those appointed to supervise the AP on the Contracting Body's behalf.
- 3.14. The Contractor will need to undertake their own risk assessment on arrival on site of any potential hazards. The Contractor must ensure Valuers maintain risk awareness at all times and use their professional judgement to consider any operational risks that may arise, and levels of inherent danger, advising APHA and any third parties as necessary if risks or dangers are identified.
- 3.15. The Contractor must ensure that Valuers supplied are fit and able to carry out the tasks required of them. It will be the Contractor's responsibility to assess the suitability of Valuers and undertake occupational health checks as they deem appropriate.
- 3.16. In the event of any accidents occurring, the Contractor or Valuer shall inform the Authority and/or Other Contracting Body immediately.

4. OUTBREAK OR INCIDENT FUNCTIONS

- 4.1. In an Outbreak or Incident, Valuers may be licensed to move on and off premises which are under restriction, by issue of a notice from the Authority and/or Other Contracting Body. The notice will prescribe what must and must not happen on the Affected Premises (AP) and will require the Valuer to follow strict bio-security guidelines, including wearing required PPE and RPE, and what sort of equipment can be brought on to site. Failure to observe the measures required in the notice is an offence under the Animal Health Act 1981, section 73.

- 4.2. Valuers may be required to be inducted on to each AP. Regardless of this, the Contractor shall ensure that all Valuers are aware of their responsibilities on site, including the responsibility to comply with all instructions given by persons appointed by the Authority and/or Other Contracting Body with responsibility for overseeing the operation of the Premises.
- 4.3. Anybody entering an AP may be subject to a 'Quarantine' Period after the provision of the Services, meaning that they may not be allowed to have contact with susceptible live animals for a specified number of hours after entering an AP. If a Valuer's normal day to day employment obligations requires direct contact with live susceptible animals, and the required Quarantine period (72/96 hours dependent on the disease) prevents them from performing other usual work/tasks relating to their employment, a Quarantine Fee may be paid by the Authority and/or Other Contracting Body to the Contractor for the required period of Quarantine (subject to the type of disease and provision of suitable evidence by the Contractor to confirm the impact of the quarantine on the Valuer's normal obligations).
- 4.4. The Contractor should make all reasonable efforts to re-deploy their staff to other work areas that do not expose them to susceptible species. If these staff are able to perform other paid work in the quarantine period, then no payment from the Authority or any Other Contracting Body will be made. At the time of call-off, the Contractor must confirm if this quarantine period will affect any of their Staff. This will then be taken into account by the Authority and/or Other Contracting Body when awarding a Call Off Contract.
- 4.5. If Valuers live with, but do not work with, susceptible animals (e.g. pets), then no payments will be made by the Authority and/or Other Contracting Body to the Contractor. For example, where an employee cannot go home during or after the period of provision of the Services because they have a pet at home which may be susceptible to infection, any expenses associated with this will not be payable by the Authority and/or Other Contracting Body.
- 4.6. The Contractor must ensure Valuers do not take any unauthorised vehicle, equipment or animal onto the site where they are performing the Services.
- 4.7. Where zoonotic diseases are present, it may be a condition of the Call-Off Contract that any Valuers attending the AP are willing to be vaccinated and take anti-viral medicines as directed. Such vaccinations or medicines are normally provided by the Contracting Body, but where this is not the case, the Contractor will be expected to provide these to Valuers and the Contracting Body will reimburse the reasonable costs of provision of immunisation and anti-viral prophylaxis. Evidence of these costs must be provided.
- 4.8. The Contractor will be expected to be able to provide Valuers at very short notice: Valuers may need to be available and ready at the AP, typically within 6-12 hours of notice being given.
- 4.9. For Daily Routine Work it is expected that there will be a longer lead time than for Outbreak or Incident Services.

5. DAILY ROUTINE FUNCTIONS

- 5.1. Daily Routine Functions include any requirement for a valuation that does not involve an Incident or Outbreak and has a suitable lead in time for the Service. This requirement will typically be used for TB valuations where table valuations are not applicable, but may also be used to identify Valuers to undertake valuations for other statutory control diseases, for example Brucellosis, Enzootic Bovine Leukosis (EBL) or Bovine Spongiform Encephalopathy (BSE).
- 5.2. Valuation would be undertaken for the purposes of compensation under the Animal Health Act 1981. It is the responsibility of the Valuer to ensure that all valuations provided are compliant with all relevant legislative requirements dependant on the region the valuation is taking place in.
- 5.3. It is the responsibility of Valuers to ensure that documentation is completed and distributed in accordance with instructions issued by the Authority or Contracting Body.
- 5.4. The Authority and/or Contracting Body reserve the right to seek remedy in cases where the procedures set out in the Framework, or in instructions as may be issued from time to time, are not followed.
- 5.5. If when valuing an animal the Keeper rejects a Valuer, the Valuer will be nominated by the President of the Royal Institute of Chartered Surveyors (RICS), the Central Association of Agricultural Valuers (CAAV) or Institute of Auctioneers and Appraisers in Scotland (IAAS). These nomination arrangements are outside the scope of this Framework Agreement, however if the Valuer appointed is a Valuer on this Framework, then the Framework terms and rates will apply.
- 5.6. Failure to mutually agree to the joint appointment of a Valuer may occur immediately when approached by the Authority and/or Contracting Body, or if the Keeper refuses to sign the BT1 valuation form, if applicable (Keepers are not required to sign the valuation form in Wales, Region 2) on the day of the valuation. In the event of a refusal on farm, the Valuer must inform the Authority and/or Contracting Body immediately.

6. The Valuation Process

- 6.1. The valuation process for animals will be as follows:
 - a) The Authority or Contracting Body will provide Valuers with an electronic copy of the BT1 valuation form, where applicable, in advance of the valuation. Valuers will be required to print a copy of the form for completion on farm. A hard copy can be provided on request.
 - b) The Valuer must contact the Authority and/or Other Contracting Body if the time / date of the valuation needs to be changed, at the earliest opportunity and within 1 working day.

- c) In Scotland (Region 1) and England (Region 3), the Valuer will carry out the valuation only after the Keeper has signed the BT1 valuation form, if applicable. The Valuer should refrain from discussing the value of the animals before the valuation form is signed, and must not enter into any negotiations about the price.
- d) The Valuer should conduct their own safety risk assessment, and should only continue to value the animal if they have deemed it safe to do so. If a Valuer decides it is not safe to value the animal, they should notify the Authority and/or Other Contracting Body immediately.
- e) The Valuer must check that a passport and ear tags, if applicable, are present before the valuation takes place. If there is no passport or ear tags, the animal has no market value, and should not be valued unless directed otherwise by the Authority and/or Other Contracting Body.
- f) The Valuer must check the ear tag number of each animal valued.
- g) The Valuer must check the pedigree certification before valuing pedigree animals.
- h) The Valuer must only value the animals as instructed by the Authority and/or Other Contracting Body.
- i) The Valuer must assess the value of the animal on the basis of its market value as if it had been purchased on the open market at the time of valuation.
- j) If the Valuer encounters any issues, or if the valuation does not take place for any reason, the Valuer must contact the Authority and/or Other Contracting Body immediately.
- k) The Valuer will complete the BT1 valuation form, if applicable, and will provide a copy of the form to the cattle Keeper
- l) The Valuer will remind the Keeper of the requirement to present TB reactor cattle for slaughter in a clean condition, if applicable.
- m) The Valuer will be expected to post or otherwise return the original completed valuation form to the Authority and/or Other Contracting Body Office (using a prepaid envelope) on the same day as the valuation. In exceptional cases where this is not possible, Valuers should ensure that the valuation form is sent no later than 24 hours after the valuation.
- n) Valuers should carry blank copies of the BT1 valuation form to enable additional valuations to take place if required by the Authority and/or Other Contracting Body.
- o) Valuers will be carrying out valuations on behalf of the Authority and/or Other Contracting Body, and should refrain from discussing policy or offer advice on breakdown management whilst on official business. Valuers should refer the Keeper to the Authority and/or Other Contracting Body if they have any questions about the management of their breakdown.
- p) The Valuer must not discuss any other valuations they have undertaken with the Keeper.

6.2. The Valuation Process for other equipment and property will be as follows:

- a) The Authority or Contracting Body will provide Valuers with an electronic copy of a valuation or order form, in advance of the valuation. Valuers will be required to print a copy of the form for completion. A hard copy can be provided on request.
- b) The Valuer must contact the Authority and/or Other Contracting Body if the time / date of the valuation needs to be changed, at the earliest opportunity and within 1 working day.

- c) The Valuer should conduct their own safety risk assessment, and should only continue to value if they have deemed it safe to do so. If a Valuer decides it is not safe to value, they should notify the Authority and/or Other Contracting Body immediately.
- d) The Valuer must only value the item as instructed by the Authority and/or Other Contracting Body.
- e) The Valuer must assess the value of the item on the basis of its market value as if it had been purchased on the open market at the time of valuation.
- f) If the Valuer encounters any issues, or if the valuation does not take place for any reason, the Valuer must contact the Authority and/or Other Contracting Body immediately.
- g) The Valuer will be expected to post or otherwise return the original completed valuation form to the Authority and/or Other Contracting Body Office on the same day as the valuation. In exceptional cases where this is not possible, Valuers should ensure that the valuation form is sent no later than 24 hours after the valuation.
- h) The Valuer must not discuss any other valuations they have undertaken with the Keeper.

6.3. Applicable to Regions 1 (Scotland) only for Bovine TB Valuations

6.3.1. Under the Tuberculosis (Scotland) Order 2007, as amended, the market value of a bovine animal for the purposes of payment of compensation (where the Scottish Ministers cause a bovine animal to be slaughtered under section 32 of the Animal Health Act 1981 in its application to tuberculosis), is determined:

- a) by agreement between the Scottish Ministers and the owner of the animal;
- b) by agreement between two Valuers, one appointed by the Scottish Ministers and the other by the owner of the animal;
- c) by one Valuer, appointed jointly by the Scottish Ministers and the owner of the animal; or
- d) failing agreement or appointment, by a Valuer nominated by the President of the Institute of Auctioneers and Appraisers in Scotland.

6.3.2. If a Valuer is appointed under either b), c) or d) of the above methods and is a Valuer on this framework, then the framework terms and rates will apply.

6.3.3. Under the Tuberculosis (Scotland) Order 2007 (as amended), only individuals acting alone may be appointed or nominated for the purposes of any of the above methods.

6.3.4. Under the Tuberculosis (Scotland) Order 2007 (as amended), the Valuer or Valuers shall give the Scottish Ministers and the owner of the animal a certificate in writing of the value of the animal.

6.3.5. Under the Tuberculosis (Scotland) Order 2007 (as amended) by The Tuberculosis (Miscellaneous Amendments) (Scotland) (No. 2) Order 2018, the maximum compensation payable where the Scottish Ministers cause a bovine animal to be slaughtered under the Animal Health Act in its application to Tuberculosis is currently set at £7500 for certified pure bred pedigree animals and £5000 for non-pedigree animals.

6.3.6. When attending a premises to carry out a valuation the appointed Valuer must be accompanied by a representative of the Authority and/or Other Contracting Body. The Authority and/or Other Contracting Body will supply pro-forma documents to be filled in by the Valuer and instructions on their completion. It is the responsibility of the Valuer to ensure they understand the requirements for recording the valuation. The Authority and/or Other Contracting Body representative is not permitted to express any opinion as to the value of the stock or in any way attempt to influence the valuation. They will need to ensure, however, that the paperwork is in order before it is signed.

6.3.7. Legislation provides recourse for Keepers to dispute the initial valuation of their animals. Immediately prior to submitting the completed valuation the Valuer must notify the Keeper firstly, of their right to dispute the valuation if they believe it is incorrect and secondly, the process for doing so.

6.3.8. It is the responsibility of the Valuer to ensure that the information provided is consistent with all relevant legislative requirements. Where the Keeper disputes the valuation of only a few animals out of the total number valued, the Valuer may be contacted to determine whether they stand by their valuation of the animals in dispute.

6.3.9. If a Keeper disputes the valuation, and the Valuer have confirmed that they are satisfied with the initial valuation, Scottish Ministers will arrange arbitration proceedings. On the basis that Scottish Ministers will be bound to seek to uphold the Valuer's valuation the Valuer will usually be required to give evidence, either written, oral or possibly both, to demonstrate the assessment is based on a proper market valuation. For this reason, Valuers are required to make detailed notes and, where appropriate, record photographic evidence of the individual animal or herd they are valuing.

6.4. Applicable to Regions 2 (Wales) only for Bovine TB Valuations

6.4.1. Under Article 26 of the TB order 2010 (as amended) - Market value.

(1) Notwithstanding the provisions of article 3 of the Diseases of Animals (Ascertainment of Compensation) Order 1959(), the market value of a bovine animal which the Welsh Ministers cause to be slaughtered must be determined—

- a) by a Valuer appointed by the Welsh Ministers; or
- b) failing such appointment, by a Valuer named on a list maintained by the Welsh Ministers, nominated by the President of the Royal Institution of Chartered Surveyors or the President of the Central Association of Agricultural Valuers as the Welsh Ministers may decide in any particular case or class of case.

(2) A Valuer appointed or nominated under sub-paragraph (1)(a) or (1)(b) must be paid by the Welsh Ministers and must inform, in writing, the Welsh Ministers and the Keeper of the market value.

(3) In this paragraph a reference to a Valuer is a reference to an individual and not to a company or firm or to two or more persons jointly.

6.4.2. Paragraph 2(4) of the Schedule to the Tuberculosis (Wales) Order 2010 provides that the market value of an animal is the price that might reasonably be expected would have been obtained for it from a purchaser in the open market at the time of valuation if the animal were not an affected animal or a suspected animal.

6.4.3. Valuers to note that they may occasionally be requested by the Authority and/or Other Contracting Body to value animals at the slaughterhouse before the slaughter of the animal.

6.4.4. The Contractor should be aware that work is ongoing on a new Tuberculosis (Wales) Order. The Welsh Government will ensure that Contractors are made aware of any changes which have implications on the Services provided under this Framework Agreement.

6.5. Monitoring and justification process in Wales

6.5.1. In order to address the risk of overcompensation, Valuers will be subject to on-going monitoring and scrutiny by the Liaison Valuer and the Monitor Valuers who are appointed directly by the Welsh Government and therefore sites outside of this framework. The Monitor Valuers will collectively assess, from information provided on a regular basis by APHA, whether a valuation is broadly in line with current market value, and will do so for all cattle valued.

6.5.2. The Monitor Valuers will meet on a monthly basis to review all valuations carried out in the previous month. If the Monitor Valuers consider that a valuation is not in line with market value (i.e. either significantly above or below the market value), they will advise the Welsh Government to issue a letter requesting further information from the Valuer, including comparable market data to support the valuation.

6.5.3. Valuers must ensure that justification responses and automatic justification are submitted to the Welsh Government within a deadline of 2 weeks from the date of the letter.

6.5.4. Contractors must ensure that all justification responses and letters provide sufficient information to satisfy the monitoring panel, for example relevant comparable market information.

6.5.5. In addition to the above, Valuers will be automatically required to provide justification, including a photograph, for all animals valued over thresholds determined by the Welsh Government. Automatic justification must be submitted to the Welsh Government's TB Team within 2 weeks of the date of valuation. The Welsh Government has developed standard justification forms for completion, which will be shared with successful Contractors.

6.5.6. The Monitor Valuers may also attend valuations to monitor and support Valuers on farm. Valuers may request the attendance of a Monitor Valuer on farm should they require support.

6.5.7. The Monitor Valuers may also routinely visit abattoirs to see TB reactor cattle before they are slaughtered to assess whether the valuation is in line with market value.

6.5.8. The automatic justification thresholds are subject to change, but are currently set at the following levels:

- Commercial cattle - £1,800
- Pedigree cattle - £3,000.

7. TECHNICAL REQUIREMENTS FOR LOT 2

Expert Valuation Services

7.1. There may be some situations where the Keeper has a legal right to appeal the original valuation. In the event of a valuation being disputed by the Keeper in either support of Daily Routine Work or in an Outbreak or Incident, the Authority may require the provision of Expert Valuation Services delivered by an Expert Valuer(s) with experience in valuing the class of animal/bird/other whose value is being disputed.

7.2. It is likely that when this Service is required, the animals will be dead and disposed of. The Expert Valuer is expected to assess the original valuation through a written assessment, based on the records (including digital photographs) the original agricultural Valuer made in the original assessment alongside any representations made by the Keeper/Keeper and/or the Authority or Contracting Body.

7.3. The Expert Valuation Services are usually expected to be provided from the Contractor's premises and the Contractor must provide their own computer and any other equipment required for the performance of the Services. However in some instances, Expert Valuers may be required to travel and this will be specified and agreed at the time of Call-off.

7.4. No Expert Valuer can be used to provide Lot 2 Services if connected to the Valuer that has been involved in the original valuation. Unless in exceptional circumstances and when mutually agreed between the Authority and/or Other Contracting Body and the Keeper. The Authority and/or Other Contracting Body will require the Contractor to indicate how any perceived conflict of interest would be dealt with if performing the Service where the same Contractor provided the Lot 1 valuation.

7.5. Subject to the relevant legislation, the Expert Valuer may be required to act in either:

A) Expert Determination:

- Required to determine whether the original valuation was in accordance with market value, or was above or below market value. A written decision will be required to this effect, specifying (with reasons where appropriate) the value of the animal in the opinion of the Expert Valuer following an assessment of any written representations that have been submitted to him/her.
- The Expert Valuer will expect to receive the reasons of the appeal by the Keeper of the animals and a copy of the original valuation (plus photographic or other evidence that was taken into account by the original Valuer). The Expert Valuer may also ask the Authority and/or Contracting Body to give reasons why the original valuation should stand.
- The Expert Valuer is required to act as an independent expert, who has inquisitorial powers and makes a binding expert determination on the valuation of the animals.

Or,

B) Arbitration (acting as an arbitrator; in Scotland can be referred to as an “arbiter”):

- Required to act as arbitrator/arbiter of the disputed initial valuation. In England and Wales arbitrations are governed by the Arbitration Act 1996 and in Scotland by the Arbitration (Scotland) Act 2010.

7.6. To act as an arbitrator/arbiter, the Expert Valuer may be required to have undertaken appropriate arbitration training, such as that provided by RICS or the Chartered Institute of Arbitrators ([CIArb](#)), or other equivalent. The arbitrator/arbiter must be capable of determining the evidence submitted by the parties and writing up a binding arbitration valuation award that incorporates findings on the issues in dispute.

7.7. The arbitrator/arbiter must allow each party a reasonable opportunity of putting their reasons forward regarding the appropriate valuation of the animals. They must adopt procedures suitable to the circumstances of the particular case so as to provide a fair means for the resolution of the matter, in particular in determining the extent and type of evidence that can be submitted.

7.8. In order to be eligible for Lot 2, a Contractor must be able to supply at least one Expert Valuer who meets the following criteria:

- has at least 10 years of current UK professional experience in livestock/animal valuations (which would be specific to the class/species of animal being valued), or general agricultural valuing, **and**;
- is registered as a Fellow with the [Central Association of Agricultural Valuers](#) (CAAV), **or**;
- is a Fellow of the [Institute of Auctioneers and Appraisers in Scotland](#) (IAAS), **or**;
- is a Fellow with the [Livestock Auctioneers Association](#) (LAA), **or**;
- is a Fellow of the [Royal Institute of Chartered Surveyors](#) (RICS), **or**;
- is a member of an equivalent trade association within the EU; **or**;
- is established and currently maintaining a specialisation in livestock/animal valuations. Note that individuals or companies that fall into this group (i.e. do not meet one of the above professional registration criteria) may be required to provide evidence of their experience at any time during the life of the Framework Agreement.

7.9. The Expert Valuer may be asked by the Authority or Other Contracting Body to act as an expert witness in a court of law.

7.10. The Expert Valuer will be required to produce a written report of their findings in a set period of time, which will be conveyed at the time of Call-off.

8. TECHNICAL REQUIREMENTS FOR LOT 3

Monitor Valuation Services

8.1. The Monitor Valuation Service will involve an audit of the range of valuations being submitted (this would be most likely to occur in a large Outbreak) and aims to ensure that Valuers and Expert Valuers are completing the valuation assessments correctly and consistently.

8.2. Monitor Valuation Services must be provided by a Monitor Valuer with appropriate skills and experience (typically, a Monitor Valuer will have much greater depth of experience than an Expert Valuer or Valuer).

8.3. The Monitor Valuation Services are normally provided from the Contractor's premises (rather than on site at the AP) based on the records (including digital photographs) the Valuer or Expert Valuer has made in the original assessment(s) of valuation. Contractors must therefore provide all necessary equipment and facilities required for the performance of the Services. Monitor Valuers may be required to travel – this will be specified in the Call-off.

8.4. The Monitor Valuer may be invited to participate in telephone conferences with representatives of the Authority and/or Contracting body to discuss matters relating to valuation. The Services may also involve advice from the Monitor Valuer to help inform policy or to meet other advisory requirements.

8.5. In order to be eligible for Lot 3, a Contractor must be able to supply at least one Monitor Valuer who meets the following criteria:

- has at least 15 years of current UK professional experience in livestock/animal valuations (which would be specific to the class/species of animal being valued), or general agricultural valuing, **and**;
- who has recent experience of acting in an advisory capacity to industry and/or government, **and**;
- who has recent experience of analysing valuation data, **and**;
- is registered as a Fellow with the [Central Association of Agricultural Valuers](#) (CAAV), **or**;
- is a Fellow of the [Institute of Auctioneers and Appraisers in Scotland](#) (IAAS), **or**;
- is a Fellow with the [Livestock Auctioneers Association](#) (LAA), **or**;
- is a Fellow of the [Royal Institute of Chartered Surveyors](#) (RICS), **or**;
- is a member of an equivalent trade association within the EU; **or**
- is established and currently maintaining a specialisation in livestock/animal valuations within a practise that operates professionally. Note that individuals or companies that fall into this group need to provide a CV and written references as part of their tender response, which will be verified.

9. EQUIPMENT – All Lots

9.1. Contractors are responsible for the provision of all equipment necessary to perform the Services. As a minimum, Contractors will be expected to provide all disinfectable rubber boots and disposable boiler suits or disinfectable clothing (as defined in the Call-off) necessary for the Valuer to operate on site. The Contracting Body may provide other necessary PPE, where this is the case, it will be confirmed at the time of the Call-off and may be charged for. PPE should be used in line with the APHA advice, as detailed in Schedule 3.

9.2. Any approved equipment brought on to site will as a minimum be subject to cleansing and disinfection biosecurity protocols. These requirements may be increased in the event of an Outbreak or Incident.

9.3. A digital camera will be required to photograph any items/herds/individual animals to support the valuation assessment. Any cameras taken on to an AP will be required to be cleansed and disinfected prior to being removed from the premises. For this reason they should be robust enough to be exposed to the cleansing and disinfection process. Generally this process will involve the camera being wiped with disinfectant wipes. The Authority's representative should be consulted before bringing any camera or other equipment onto an

AP. Cameras may also be provided by the Authority and/or Other Contracting Body in certain circumstances.

9.4. Any other items required as part of the valuation will also be subject to strict cleansing and disinfection processes and must be robust enough to pass through this process. This includes, but is not limited to, mobile telephones, laptop/hand-held computers, calculators, stationery and measuring devices. The Authority's representative should be consulted before bringing any equipment onto an AP.

9.5. Paper, if clean and not contaminated will generally be allowed off the AP with no cleansing or disinfection. The Authority's onsite representative will advise on this matter. The Authority will supply pro-forma documents to be filled in by the Valuer. The Valuer should make all efforts to keep the papers clean and unexposed to direct contamination.

9.6. Any pictures or digital recordings made on an AP are considered to be the intellectual property of the Authority and/or Contracting Body and must be treated as per the requirements in the Documentation section and in accordance with the Authority's terms and conditions of contract.

10. BIOSECURITY – All Lots

10.1. Biosecurity is a system of controls that will prevent or minimise the risk of introduction or spread of disease.

10.2. Measures must, as a minimum, be the equivalent of Defra, Scottish or Welsh Government Standards, dependent on which Geographical Region the Services are being delivered in:

<https://www.gov.uk/guidance/controlling-disease-in-farm-animals>

<http://www.gov.scot/Topics/farmingrural/Agriculture/animal-welfare/Diseases/15721>

<https://gov.wales/biosecurity-guidance>

10.3. The general principles which must be applied by all Valuers are as follows:

- All equipment and personal protective equipment (PPE) utilised on any premises must be visibly clean at the start of each working day,
- All equipment and PPE utilised on any premises must be cleaned and disinfected on arrival and when leaving, including vehicle wheels and wheel arches.
- Vehicles should be parked in a location that is not heavily contaminated and wheels and wheel arches should be disinfected as appropriate between locations.

10.4. In extremely high risk situations, i.e. Foot and Mouth Disease outbreak, specific or additional biosecurity measures must be followed. These additional measures may include not accessing certain areas.

- 10.5. All Valuers must comply with all biosecurity protocols as issued by the Authority or Contracting Body or any reasonable specific requirements stated by the land owner.
- 10.6. All Valuers will endeavour to avoid any adverse impact on the environment that may arise from any valuation work and therefore all Valuers must use Defra approved disinfectant to disinfect and cleanse vehicles and protective clothing at the correct dilution rate, information on which can be found at:
http://disinfectants.defra.gov.uk/DisinfectantsExternal/Default.aspx?Module=ApprovalsList_Sl
- 10.7. The Authority or Contracting Body staff will undertake regular routine checks to ensure that compliance with regards to biosecurity have been met.

11. DOCUMENTATION – All Lots

- 11.1. The Contractor will keep records relating to the Services performed and of the receipt, storage, processing and despatch of all correspondence resulting from their Contract. For audit purposes these records shall be retained for 6 years and will include:
- Date and time of notification to the Contractor to carry out the Service;
 - Reference, name and address of the notified premises and any other applicable locations related to the Service;
 - Official identification number(s) and numbers of animals and value, maintaining audit trail;
 - Details of the Contract Price for providing the Service;
 - Any risks or issues identified whilst providing the Service;
 - All journeys undertaken, including mileage travelled, route taken (most economic)
- 11.2. The Contractor shall ensure that all invoices are clear, accurate, and that invoices are submitted within ten (10) calendar days from the date of the completed order to the Authority or Contracting Body.
- 11.3. The Contractor will be required to submit itemised invoices, separated out by each individual Lot (where appropriate). These must include the purchase order number, as provided by the Contracting Body in the Order Form.
- 11.4. The Contractor shall make such records available to the Authority or Contracting Body or any other nominated officials at any reasonable time and shall not destroy any records without the prior written approval of the Authority or Contracting Body.

12. SUB CONTRACTING – All Lots

- 12.1. If the Contractor proposes using sub-contractor to fulfil Orders received from a Contracting Body, it shall only allocate to a sub-contractor with whom it has a signed sub-contractual agreement on the same or similar terms as the Contract.

- 12.2. Contractors shall ensure that its sub-contractor adhere to all Specification of Requirements.
- 12.3. Contractors shall ensure that its sub-contracting arrangements contain robust and adequate systems for managing risk and include processes to facilitate the handling of complaints by any third parties.
- 12.4. An escalation process to the Authority and/or Other Contracting Body shall allow any sub-contractor, end user or other contractor to directly contact the Authority and/or Other Contracting Body without fear or favour should any substantive complaint not be adequately dealt with by the Contractor.
- 12.5. If the Authority and/or Other Contracting Body is requested to hear a complaint by a sub-contractor, end user or other Contractor, the Contractor shall co-operate fully with the Authority and/or Other Contracting Body, including with any requests for further information. The Authority and/or Other Contracting Body's decision in respect of a complaint shall be final.

13. WELSH LANGUAGE STANDARDS (Only applicable to Services provided in Regions 2a and 2b in Wales)

- 13.1. The Welsh Government is committed to the principle of treating the Welsh and English Languages on a basis of equality. The Welsh Language (Wales) Measure 2011 (the "Measure") makes provision for the specification of standards of conduct in relation to the Welsh language. The current standards are specified in the Welsh Language Standards (No. 1) Regulations 2015. The Measure also provides that the Welsh Language Commissioner may by notice require certain public bodies to comply with some or all of the standards specified.
- 13.2. The Welsh Language Commissioner has issued a compliance notice on the Welsh Ministers specifying which of the standards currently apply to any activity or Service provided by or on behalf of the Welsh Ministers. A copy of the latest version of the compliance notice is available at:
<http://www.comisiynyddygydraeg.cymru/english/Pages/Home.aspx>
- 13.3. The Contractor(s) appointed to deliver Services under this Framework may be providing the Services on behalf of the Welsh Ministers and must therefore comply with the relevant Service Delivery Standards listed in the compliance notices issued to the Welsh Ministers from time to time.
- 13.4. The Service Delivery Standards which currently apply to the Services are listed below. The Authority will notify the Contractor(s) of any changes to the Service Delivery Standards with which the Services must comply.
- 13.5. The Contractor(s) will be required to report against compliance with the standards in the same way as for other duties and requirements under the Contract.
- 13.6. The relevant standards in relation to the Framework are: 1,2,3,4,5,6,7,8,9,10,12,13,14,15,16,17,18,20,21,22,24,24a,26,26a,27,27a,27 d,29,29a,30,31,32,33,34,35,36,37,38,40,47,48,49,50,50a,50b,51,52,55,56,5

7,58,59,60,61,62,63,64,67,68,69,70,71,72,72a,74,75,76,77,77a,79,80,81,82,83,85,87.

- 13.7. Any communications or marketing Services provided as part of this Framework must be provided in accordance with the Welsh Government's Guidance on the Use of the Welsh Language in Welsh Government communication and marketing work. This guidance is available on the Welsh Government.

website:

https://chcymru.org.uk/uploads/events_attachments/Guidance_for_the_use_of_the_Welsh_Language_in_Welsh_Government_communication_and_marketing_work.pdf

Schedule 2 - Call-Off Contract and Award Methodology

1. Call Off Ranking

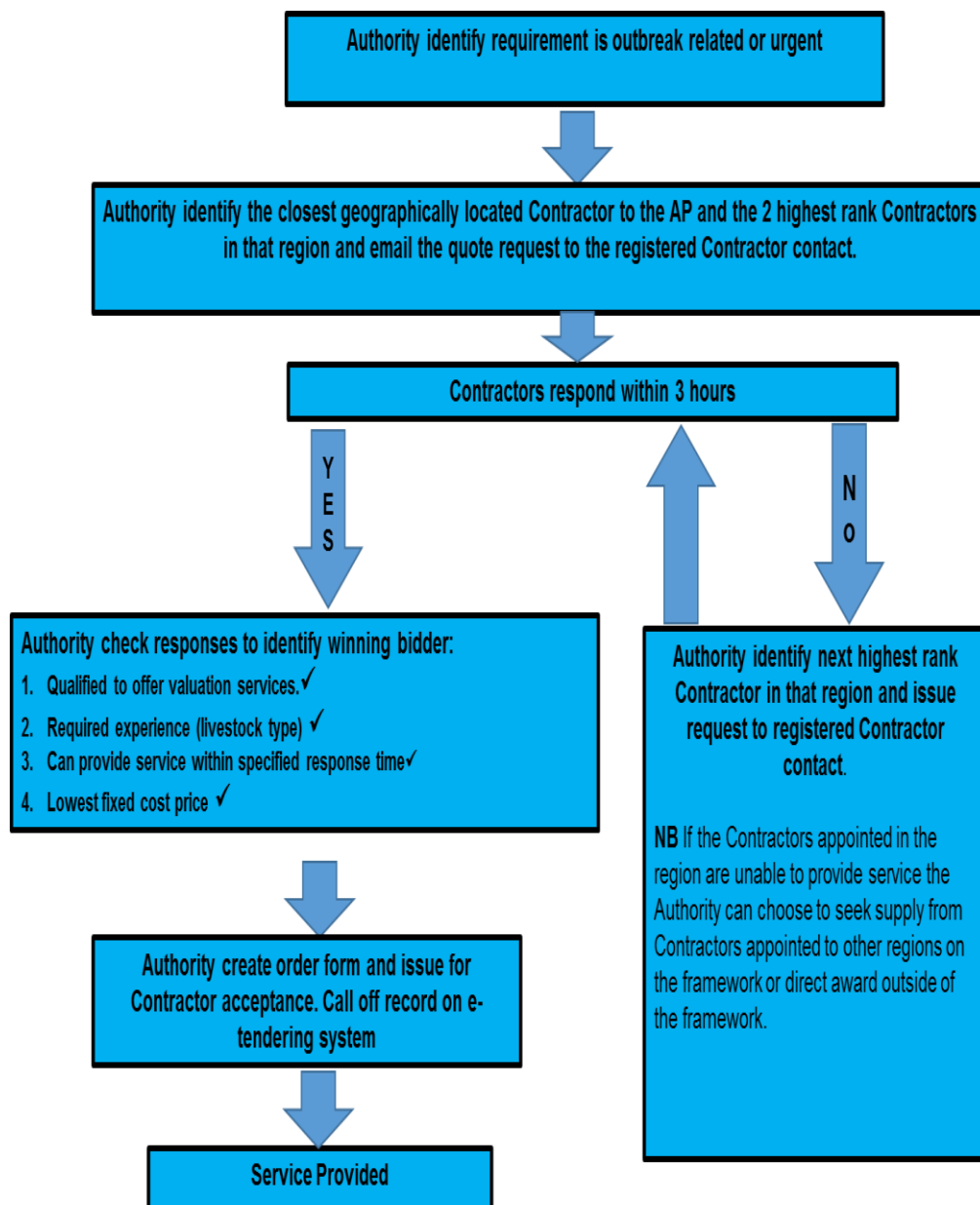
- 1.1. The framework rates applicable at the time of a Call Off requirement will be applied to ranking Contractors in each geographic location.
- 1.2. A supplier ranking will be established for:
 - 1.2.1. Commercial Animals Fees (Hourly + Daily);
 - 1.2.2. Pedigree Animals Fees (Hourly + Daily);
 - 1.2.3. Valuation Services i.e. agricultural plant and equipment, other property,
animal feed/fodder and crops (Hourly + Daily);
 - 1.2.4. A combined Commercial Animal Fees (Hourly +Daily) + Pedigree Animals
Fees (Hourly +Daily).
- 1.3. The highest ranked Contractor will be the lowest combined value, the second highest ranked Contractor will be the second lowest combined value. The lowest ranked Contractor will be the highest combined value.
- 1.4. The Authority will determine the type of work required and use the appropriate ranking to determine which Contractors to approach.

2. The Call-off process will consist of two approaches.

3. Outbreak: Target deployment within six (6) to twenty-four (24) hours.

- 3.1. An Outbreak is defined by any suspected or confirmed animal disease case OR any situation that the Authority determines is urgent in its nature.
- 3.2. The two highest ranked Contractors and the closest geographically to the Affected Premises located Contractor (as determined by the Authority) for the Geographical Region where deployment is required will be contacted directly via email and followed up with a phone call and asked to quote.
- 3.3. The Authority will provide basic details of the requirement and Contractors will be invited to respond within 3 hours (or less if required) with;
 - confirmation that the Contractor is still qualified to offer valuation Services.
 - if they possess the required experience (livestock type);
 - if they can provide the Service within the required timeframe of the request being made;
 - a fixed cost price (must be within the agreed framework rate quoted at stage 1).

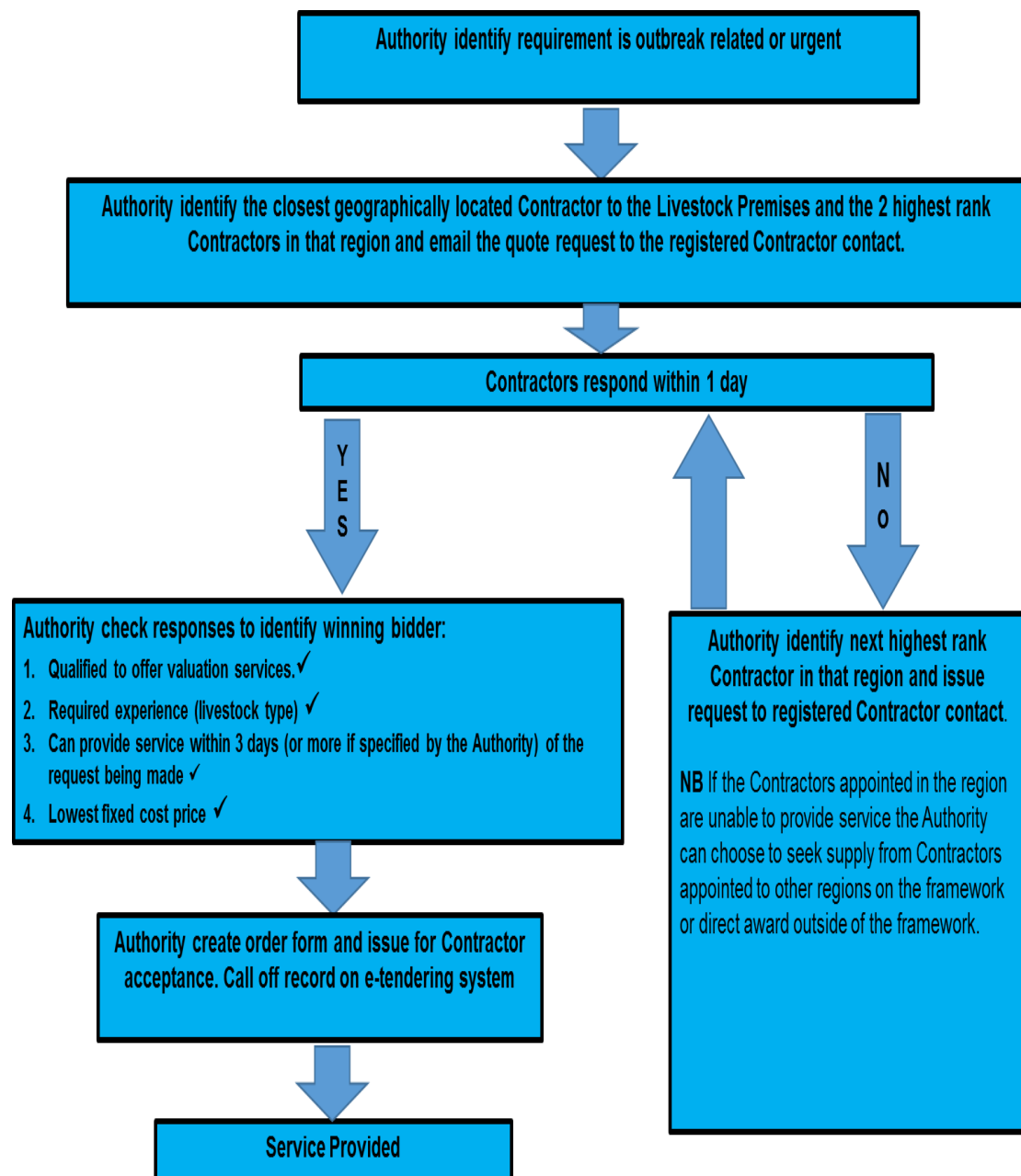
- 3.4. The winning bidder must have confirmed the first three requirements and offered the lowest fixed cost price.
- 3.5. If the highest ranked Contractors can't fulfil the requirement (do not have the required experience) or do not respond within 3 hours, the next ranked Contractor in the region will be approached until supply is established. If the Contractors appointed in the Geographical Regions are unable to provide Service the Authority reserves the right to seek the services from Contractors appointed to other regions on the framework or direct award outside of the framework (following appropriate BAU governance process).
- 3.6. An Order Form will be issued to the winning bidder and recorded on the e-tendering system.
- 3.7. The flow chart below demonstrates the high level process that will be followed to fulfil Outbreak requirements.



4. Daily Routine Functions (BAU) deployment: Target deployment within three (3) days (72 hours) (or more if specified by the Authority).

- 4.1. BAU deployment is defined as TB valuation cases and or any other non-urgent Authority requirement.
- 4.2. The two highest ranked Contractors and the closest geographically to the Livestock Premises located Contractor (as determined by the Authority) for the Geographical Region where deployment is required will be contacted directly via email and followed up with a phone call and asked to quote.

- 4.3. The Authority will provide basic details of the requirement and suppliers will be invited to respond by 17:00 hrs the same day if contacted before 12:00 hrs, or by 12:00 hrs on the next working day if contacted after 12:00 hrs with;
- confirmation that the Contractor is still qualified to offer valuation Services.
 - if they possess the required experience (livestock type);
 - if they can provide the Service within 3 days (72 hours) of the request being made;
 - a fixed cost price (must be within the agreed framework rate quoted at stage 1).
- 4.4. The winning bidder must have confirmed the first three requirements and offered the lowest fixed cost price.
- 4.5. If the highest ranked Contractors can't fulfil the requirement or do not respond within the timescales, the next ranked Contractor in the Geographical Region will be approached until supply is established. If the Contractors appointed in the Geographical Region are unable to provide Service the Authority can choose to seek supply from Contractors appointed to other regions on the framework or direct award outside of the framework (following appropriate BAU governance process).
- 4.6. An order form will be issued to the winning bidder and recorded on the Authority and/or Other Contracting Bodies' local e-filing system.
- 4.7. The flow chart below demonstrates the high level process that will be followed to fulfil Outbreak requirements.



Schedule 3 - APHA Advice on Personal Protective Equipment (PPE) and Respiratory Protective Equipment (RPE)

1. The Contractor must supply the minimum equipment requirements, as listed below. The Contractor is required to ensure that the equipment is available in sufficient quantities, making certain that all items are within their shelf life.

| ITEM | NOTES |
|---|--|
| Waterproof jacket and trousers and hi-visibility vest | Suitable for cleansing and disinfecting. |
| Wellington boots | Suitable for cleansing and disinfecting. |
| Disposable boiler suit (s) with hoods and disposable gloves | Disposable boiler suits should not be re-used after a farm visit. (non-disposable boiler suits or lab coat should not be used unless authorised) |
| Respiratory protection [minimum FFP3 disposable masks]. | Appropriate to the risk faced and also best fit. APHA may provide specialist RPE in an Outbreak or Incident. |

2. In addition to the minimum equipment requirements, Contractors may find the following additional items useful in their delivery of the Service.

| ITEM | NOTES |
|--|---|
| Disinfectant (England, Scotland and Wales) Disinfectant (Northern Ireland) http://www.dardni.gov.uk/approved-disinfectants-14-april-2014.pdf | Approved disinfectant suitable for the disease situation at the premises, used according to manufacturers guidance and in compliance with the relevant disease control order. Suitable for use on entry, during and leaving premises. Must be stored, carried and used in accordance with Health and Safety requirements. |
| Bucket, brush, hoof pick, sponge for PPE | Suitable for cleansing and disinfecting. |

The Authority and/or Other Contracting Body may provide other necessary PPE, where this is the case it will be confirmed at the time of the call off and may be charged for.

Legislative Requirements

1. The [PPE at Work Regulations 1992](#) came into force on 1 January 1993, and cover all equipment (including clothing affording protection against the weather) intended to be used for protection against any risks to Health and Safety (H&S). The main requirements of the PPE Regulations are very similar for all types of PPE and can be summarised as follows:

- PPE is to be supplied and used at work to minimise safety risks that cannot be adequately controlled in other ways;
- as the effectiveness of PPE can be easily compromised, e.g. by not being worn properly, it should always be considered as the last resort and only used where other precautions cannot adequately reduce the risk of injury;
- where PPE is the only effective means of controlling the risk of injury or ill health then managers must ensure that it is available for use at work and no charge can be made to staff;
- PPE must be suitable and sufficient for the risks involved and the conditions in the place where exposure to the risk may occur. It must prevent or adequately control the risk involved without increasing the overall level of risk;
- it must fit the wearer and be easily adjustable so that it does. When ordering PPE for a number of staff individual characteristics may have to be taken into account. It must also be compatible with any other type of protective equipment that may be worn at the same time;
- account must be taken of the demands it places on the wearer e.g. the length of time the PPE needs to be worn, the physical effort required to do the job and the requirements for visibility and communication;
- except for items which are very expensive and used infrequently it should be issued or readily available on an individual basis and staff to whom it is issued made responsible for its maintenance.

APHA decisions on PPE/RPE

2. The Safety, Health and Wellbeing (SHaW) Team conduct Risk Assessments (RAs) and Control of Substances Hazardous to Health (COSHH) assessments on all activities and substances used or encountered in APHA respectively. These are documented and conclude the level of risks associated with an activity/substance. They also advise on what PPE or RPE must be worn. The items themselves and safety standard in particular must be complied with and it must be noted that local variations are not permitted. All staff are reminded that non-compliance with the use of mandatory RA/COSHH requirements will constitute a breach of the Health and Safety at Work Act and thus they would be breaking both our own safety policies and ultimately, the law.
3. While disposable face masks are common and meet the minimum requirements, it should be noted that a review of PPE/RPE concluded that FFP3 full face masks and powered hoods would be issued to all APHA staff involved in responding to zoonotic respiratory risks such as Avian Influenza (AI). All such full face items are legally subject to checks at appropriate frequency. All new field staff must undergo an APHA approved fit test on entry to APHA and then every three years to confirm what form of respiratory protection provides them best protection and which they must have available in

case of such risks. Since 2017 APHA also requires face fit testing for disposable FFP3 masks and maintains stores of suitable types.

Training

4. Training in the use of RPE will be given when new items are introduced. The user will be aware of why PPE is needed, when to use, repair or replace it and its limitations. It is important that the users wear it consistently and correctly at all the times when exposed to the risks identified in the RA and COSHH assessments. Supervisors should ensure that there are no exemptions, e.g. for jobs which may take only a few minutes, and should make regular checks to ensure PPE is being consistently and correctly used.

Maintenance

5. PPE/RPE must be well looked after and properly accommodated when not in use. Non disposable items must be kept clean and in good repair, and any maintenance schedules specified by the manufacturer or APHA on durable items, including recommended replacement periods and shelf-life, must be followed.

European Standards for PPE/RPE

6. Since July 1995 manufacturers and Contractors must ensure that all PPE they supply is marked to show that it complies with the appropriate European Standard wherever these standards are applicable. H&S will include the requisite standards of PPE/RPE in their assessed recommendations where applicable. Existing PPE, including that meeting British Standards (BS) can continue to be used provided it still offers adequate protection. A quick guide to the differences is as follows:
 - the CE mark - signifies that PPE is approved and satisfies certain basic safety requirements, as tested and certified by an independent body;
 - the EN number - indicates the European Standard under which approval has been given; similar to the BS and in many cases supplements or replaces the BS number. EN standards apply to a wide range (but not all) of PPE/RPE and, are particularly important on RPE;
 - the Protection Factor - probably the most important marking on PPE/RPE is that which indicates the degree, type or level of protection offered by a piece of equipment; usually a combination of letters and number.

Schedule 4 - Pricing

1. Pricing established at the framework tender stage will feature as part of the Call-off process. The Contractor's **hourly** and **daily rates** will be used to identify the Most Economically Advantageous Tender at Call-off stage via set Call-off criteria.
2. The Contractor will be offered the opportunity to update their pricing each year of the Framework. This means that the pricing will be reflective of current market conditions and therefore fits the nature of the requirement whilst providing a clear mechanism to establish value for money and allocation of risk to either party.
3. The Contractor may update their Valuer base location throughout the Framework period for mileage ranking calculations.
4. The **Valuation Fee** is the price charged for the valuation services delivered as part of this Framework agreement and includes all overhead costs and other support Services required to enable the Valuers to perform the Service. This fee will apply for all valuations that are not classed as Commercial or Pedigree animals, examples include but are not limited to, agricultural plant and equipment, other property, animal feed/fodder and crops.
5. The **Commercial Animals Fee** is the price charged for valuation services for commercial animals and includes all overhead costs and other support Services required to enable the Valuers to perform the Service.
6. The **Pedigree Animals Fee** is the price charged for valuation services for pedigree animals and includes all overhead costs and other support Services required to enable the Valuers to perform the Service.
7. The **Quarantine Fee** is the price charged per person per day where the required quarantine period prevents Valuers from performing other usual work/tasks relating to their employment. The Quarantine Fee will be requested at the point of call-off where applicable to the requirement. Payment is subject to the provision of suitable evidence by the Contractor to confirm the impact on the usual Staff duties and agreement by the Authority and/or Other Contracting Body. The Quarantine fee shall not exceed the 10 x the hourly rate used by the Contractor to calculate the Service provision.
8. Where the total number of hours spent results in the cost exceeding the Day Rate, the Day Rate shall apply.

9. Pricing Matrices

Lot 1 – Agricultural Valuation Services

| Lot 1 | Commercial Animals Fee | Pedigree Animals Fee | Valuation Fee |
|---------------|------------------------|----------------------|---------------|
| Hourly Rate | ██████ | ██████ | ██████ |
| Daily Rate | ██████ | ██████ | ██████ |
| Combined Rate | ██████ | ██████ | ██████ |

Lot 2 – Expert Valuation Services

| Lot 2 | Commercial Animals Fee | Pedigree Animals Fee | Valuation Fee |
|---------------|------------------------|----------------------|---------------|
| Hourly Rate | ██████ | ██████ | ██████ |
| Daily Rate | ██████ | ██████ | ██████ |
| Combined Rate | ██████ | ██████ | ██████ |

Lot 3 – Monitor Valuation Services

| Lot 3 | Commercial Animals Fee | Pedigree Animals Fee | Valuation Fee |
|---------------|------------------------|----------------------|---------------|
| Hourly Rate | ██████ | ██████ | ██████ |
| Daily Rate | ██████ | ██████ | ██████ |
| Combined Rate | ██████ | ██████ | ██████ |

10. Travel and Subsistence

- 10.1. All Travel and Subsistence should be in line with Defra's Travel and Subsistence Policy. Claims should always be supported by valid receipts for audit purposes and must not exceed any of the stated rates below. Should the stated rate be exceeded, Defra reserve the right to reimburse only up to the stated rate. Only allowable travel expenses within GB will be paid for by the Authority. All expenses must be supported by original receipts. The Valuer will only be reimbursed for expenses that have been actually and necessarily incurred in the course of providing the Services. Rates are provided below and shall be paid exclusive of VAT.
- 10.2. Sustainability & Cost - Valuers should take steps to ensure sustainability of travel. The Authority are committed to promoting more sustainable travel

behaviours and to reducing dependence on cars in order to reduce the impact of travel on the environment. Equally, care must be exercised to ensure the mode of travel selected represents a cost effective option. Valuers are required to ensure that an effective balance of sustainability and cost is achieved when planning journeys.

- 10.3. **Mileage Allowance** - When travelling by personal vehicle whether it is provided for business purposes or privately owned by the individual the following mileage allowances are applicable:

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

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

** Under HMRC rules this expense is taxable.

- 10.4. **Air** - No air travel expenses can be claimed unless such travel is required by the Authority and is within the UK. Air travel expenses will be reimbursed at no more than the rates for economy (or equivalent) class.
- 10.5. **Rail** - When travelling by rail, travel will be reimbursed at the standard class rate.
- 10.6. **Taxis** - No taxi fares can be claimed unless such travel is required and approved by the Authority and is within GB.
- 10.7. **Fines** - The Authority and/or Other Contracting Body accepts no liability for any parking or speeding fines incurred during the provision of Services.
- 10.8. **Car Parking Charges & Tolls** - Car parking charges and toll charges necessarily incurred on official business are reimbursable at the discretion of the Authority and/or Other Contracting Body, and must be agreed in advance.

- 10.9. **Accommodation** - Where overnight accommodation is required overnight subsistence may be claimed; for example if Valuers are subject to a quarantine period following contact with the disease and are unable to return home because they themselves own livestock. This allowance will be paid at standard Travel and Subsistence rates which are currently the actual cost of bed and breakfast up to the value of £75 per night.
- 10.10. **Meal Allowance** - An additional maximum of £20 per person can be claimed to cover the cost of meals in each 24 hour period. This can include claims for soft beverages provided that receipts are produced and the total claim does not exceed £20. The Valuer will only be reimbursed for expenses which have been actually and necessarily incurred. Alcohol cannot form part of any claim. Optional tips and gratuities are considered a personal expense and will not be reimbursed excluding routine Service charges for meals which have been included on the receipt, provided this falls within the £20 limit. If no overnight stay takes place, or if individuals stay at home overnight, no meal allowance will be payable.

SCHEDULE 5 - CALL-OFF TERMS AND CONDITIONS

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PARTIES

(1) THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS at 17 Smith Square, London, SW1P 3JR (Authority).

(2) [REDACTED]
[REDACTED]
[REDACTED]

Background

- (A) The Authority placed a contract notice 2020/S 138-340811 on 20/07/2020 in the Official Journal of the European Union seeking expressions of interest from potential Contractors for the provision of Services (divided into Lots) to Contracting Bodies under a framework agreement.
- (B) The Authority invited potential Contractors (including the Contractor) on 16/07/2020 to tender for the provision of Valuation Services.
- (C) On the basis of the Contractor's Tender, the Authority selected the Contractor to enter a framework agreement to provide services to Contracting Bodies who will place Orders in accordance with the Framework Agreement.
- (D) The Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of Services and the obligations of the Contractor under the Framework Agreement.
- (E) The Customer is a Contracting Body, as specified in the OJEU Notice. It has selected the Contractor to provide the Services and the Contractor is willing and able to provide the Services in accordance with the terms and conditions of this Contract.
- (F) Execution of the Contract is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Contract is formed on the date on which both Parties communicate acceptance of its terms on the Authority's electronic contract management system ("Bravo").

GENERAL PROVISIONS

1. DEFINITIONS

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

APHA: means the Animal and Plant Health Agency.

Approval: the prior written approval of the Customer.

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

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

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

Confidential Information: means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the DPA.

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

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

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

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

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

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

Controller: means that given in GDPR

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

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

Data Protection Officer has the meaning given in the GDPR.

Data Subject: has the meaning given in the GDPR.

Data Subject Request: means a request made by, or on behalf of, a Data Subject in accordance with rights

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

Dispute Resolution Procedure: the dispute resolution procedure in clause 48.

Environmental Information Regulations: the Environmental Information Regulations 2004 (*SI 2004/3391*), together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

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

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

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

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

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

Framework Agreement: the framework agreement for the provision of Valuation Services between the Authority and the Contractor dated 08/10/2020.

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

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

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

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

Intellectual Property Rights: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the look and feel of any websites, and **Intellectual Property** shall refer to such materials.

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

Law: 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.

Month: calendar month.

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

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

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

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

Personal Data: has the meaning given in the GDPR.

Personal Data Breach: has the meaning given in the GDPR.

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

Prohibited Act: the following constitute Prohibited Acts:

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

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

Processor: has the meaning given in the GDPR.

Quality Standards: the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same

type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with (as may be further detailed in this Call-off Contract) and any other quality standards set out in the Order Form.

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

Replacement Contractor: any third party service provider appointed by the Customer to supply any services that are substantially the same as or similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

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

Service Commencement Date: As stated in the Call-Off Order Form.

Services: the provision of Agricultural Valuation Services to be supplied as specified in this Call-Off Contract and further detailed in the Specification of Requirements.

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

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

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

Specification of Requirements: means a statement of the Authority's Requirements as set out in Schedule 1.

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

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

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

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

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

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

2. INTERPRETATION

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

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

3. INITIAL CONTRACT PERIOD

The Contract shall take effect on the Service Commencement Date and shall end at the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Contract.

4. EXTENSION OF INITIAL CONTRACT PERIOD

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

5. CONTRACTOR'S STATUS

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

6. CUSTOMER'S OBLIGATIONS

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

7. MISTAKES IN INFORMATION

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

SUPPLY OF SERVICES

8. SERVICES

- 8.1 The Contractor shall supply the Services during the Contract Period in accordance with the Customer's requirements as set out in the Contract in

consideration for the payment of the Contract Price. The Customer may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.

- 8.2 The Contractor acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer before submitting its Tender so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.
- 8.3 The Contractor shall:
- (a) at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
 - (b) at all times perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 8.4 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 8.5 Subject to the Customer providing Approval in accordance with clause 9, timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

9. PROVISION AND REMOVAL OF EQUIPMENT

- 9.1 Unless otherwise stated in the Order Form, the Contractor shall provide all the Equipment necessary for the supply of the Services.
- 9.2 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior written Approval via the Order Form.
- 9.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Customer's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.

- 9.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 9.5 The Contractor shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
- (a) remove from the Premises any Equipment that in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.
- 9.6 On completion of the Services, the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

STAFFING

10. KEY PERSONNEL – NOT USED

11. CONTRACTOR'S STAFF

- 11.1 The Customer may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the 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 Customer, be undesirable.

- 11.2 At the Customer's written request, the Contractor shall provide a list of the names of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.

- 11.3 If the Contractor fails to comply with clause 11.2 within on day of the date of the request then the Customer may exclude Contractor Staff from entry to the Premises. Exercise of the Customer's rights under this clause shall not excuse the Contractor from any attributable failure to perform the Services.
- 11.4 The Contractor's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force and notified to the Contractor from time to time for the conduct of personnel when at or within the boundaries of those Premises.
- 11.5 The Contractor warrants that it has complied with the Staff Vetting Procedures in respect of all Staff employed or engaged by the Contractor at the Service Commencement Date and that it shall not employ or engage any person in the provision of the Services who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Services.

PREMISES

12. LICENCE TO OCCUPY PREMISES

- 12.1 Any land or Premises made available from time to time to the Contractor by the Customer in connection with the Contract shall be made available to the Contractor 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.
- 12.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Customer may reasonably request.
- 12.3 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior written Approval and shall be carried out by the Customer at the Contractor's expense. The Customer shall undertake modification work approved by the Customer in writing without undue delay.

Ownership of such modifications shall rest with the Customer. Before the end of the Contract Period, the Contractor shall, at the request of the Customer remove any modifications made to the Premises and reinstate or rebuild the Premises in a manner equivalent in size, quality, layout and facilities to the Premises prior to the modifications.

- 12.4 Without prejudice to clause 11.4, the Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of the Premises notified to it by the Customer, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 12.5 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted under the Contract, the Customer retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

13. SECURITY OF PREMISES

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

14. PROPERTY

- 14.1 Where the Customer issues Property to the Contractor, such Property shall be and remain the property of the Customer and the Contractor irrevocably licences the Customer and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and at all times the Contractor shall possess the Property as fiduciary agent and bailee of the Customer. The Contractor shall take all reasonable steps to ensure that the title of the Customer to the

Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Customer's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Customer.

- 14.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Customer otherwise within five Working Days of receipt.
- 14.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
- 14.4 The Contractor shall ensure the security of all the Property while in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Customer's reasonable security requirements as required from time to time.
- 14.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Customer's Default. The Contractor shall inform the Customer within two Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

15. ENVIRONMENTAL REQUIREMENTS

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

16. HEALTH AND SAFETY

- 16.1 The Contractor shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its obligations under the Contract.

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

PAYMENT AND CONTRACT PRICE

17. CONTRACT PRICE

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

18. PAYMENT AND VAT

- 18.1 The Contractor shall ensure that each invoice is submitted in accordance with the payment profile set out in the Specification of Requirements.
- 18.2 The Customer shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Customer has determined that the invoice is valid and undisputed.
- 18.3 Where the Customer fails to comply with *clause 18.2*, the invoice shall be regarded as valid and undisputed 14 days after the date on which it is received by the Customer.

18.4 Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:

- (a) provisions having the same effect as *clause Error! Reference source not found.* to *clause 18.3* of this agreement; and
- (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as *clause Error! Reference source not found.* to *clause 18.3* of this agreement.

In this *clause 18.4*, "Sub-Contract" means a contract between two or more Contractors, at any stage of remoteness from the Customer in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this agreement.

18.5 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.

18.6 The Contractor shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this *clause 18.6* shall be paid by the Contractor to the Customer not less than five Working Days before the date on which the tax or other liability is payable by the Customer.

18.7 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under *clause 43* for failure to pay undisputed sums of money.

19. RECOVERY OF SUMS DUE

19.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Customer.

19.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

- 19.3 The Contractor shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Contractor.
- 19.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

STATUTORY OBLIGATIONS AND REGULATIONS

20. CONFLICTS OF INTEREST

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

21. PREVENTION OF BRIBERY

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

- 21.2 The Contractor shall:
- (a) if requested, provide the Customer with any reasonable assistance, at the Customer's reasonable cost, to enable the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
 - (b) within 30 Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing (such certification to be signed by an officer of the Contractor) compliance with this clause 21 by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Contractor shall provide such supporting evidence of compliance as the Customer may reasonably request.
- 21.3 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Customer) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.
- 21.4 If any breach of clause 21.1 is suspected or known, the Contractor must notify the Customer immediately.
- 21.5 If the Contractor notifies the Customer that it suspects or knows that there may be a breach of clause 21.1, the Contractor must respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit books, records and any other relevant documents. This obligation shall continue for 6 years following the expiry or termination of this Contract.
- 21.6 The Customer may terminate this Contract by written notice with immediate effect if the Contractor, its Staff or Sub-Contractors (in all cases whether or not acting with the Contractor's knowledge) breaches clause 21.1. In determining whether to exercise the right of termination under this clause 21.6, the Customer shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, Sub-Contractor or Contractor not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting:
- (a) with the authority or with the actual knowledge of any one or more of the directors of the Contractor or the Sub-contractor (as the case may be); or
 - (b) in circumstances where any one or more of the directors of the Contractor ought reasonably to have had such knowledge.]

- 21.7 Any notice of termination under clause 21.6 must specify:
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Customer believes has committed the Prohibited Act; and
 - (c) the date on which this Contract will terminate.
- 21.8 Despite clause 48, any dispute relating to:
- (a) the interpretation of clause 21; or
 - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Customer and its decision shall be final and conclusive.
- 21.9 Any termination under clause 21 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer.

22. DISCRIMINATION

- 22.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
- 22.2 The Contractor shall take all reasonable steps to secure the observance of clause 22 by all servants, employees or agents of the Contractor and all Contractors and Sub-contractors employed in the execution of the Contract.

INFORMATION

23. CONFIDENTIALITY

- 23.1 Subject to clause 23.2, the parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 23.2 Clause 11.1 shall not apply to any disclosure of information:
- (a) required by any applicable law, provided that clause 26 shall apply to any disclosures required under the FOIA or the Environmental Information Regulations;
 - (b) that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Contract;

- (c) that is reasonably required by the Customer;
- (d) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 11.1;
- (e) by the Customer of any document to which it is a party and which the parties to this Contract have agreed contains no Confidential Information;
- (f) to enable a determination to be made under clause 48;
- (g) which is already lawfully in the possession of the receiving party, before its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
- (h) by the Customer to any other department, office or agency of the government, provided that the Customer informs the recipient of any duty of confidence owed in respect of the Confidential Information; and
- (i) by the Customer relating to this Contract and in respect of which the Contractor has given its prior written consent to disclosure.

23.3 On or before the expiry of the Contract, the Contractor shall ensure that all documents and/or computer records in its possession, custody or control which contain Confidential Information or relate to personal information of the Authorities' employees, rate-payers or service users, are delivered up to the Customer or securely destroyed.

24. OFFICIAL SECRETS ACTS 1911 TO 1989

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

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

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

25. DATA PROTECTION

25.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 5. The only processing that the Contractor is authorised to do is listed in Schedule 5 by the Authority and may not be determined by the Contractor.

- 25.2 The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 25.3 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 25.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- (a) process that Personal Data only in accordance with Schedule 5 unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that :
 - (i) the Staff do not process Personal Data except in accordance with this Contract (and in particular Schedule 5);

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

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

(B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;

(C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and

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

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

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

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

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

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

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

25.5 Subject to clause 25.6 the Contractor shall notify the Authority immediately if, in relation to any Personal Data processed in connection with its obligations under this Contract, it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

25.6 The Contractor's obligation to notify under clause E25.5 shall include the provision of further information to the Authority in phases, as details become available.

25.7 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Contract and any complaint, communication or request made under Clause E25.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

- (a) the Authority with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Authority following any Data Loss Event;

(e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

25.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- (a) the Authority determines that the processing is not occasional;
- (b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
- (c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

25.9 The Contractor shall allow for audits of its Personal Data processing activity by the Authority or the Authority's designated auditor.

25.10 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.

25.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:

- (a) notify the Authority in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Authority;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause E2 such that they apply to the Sub-processor; and
- (d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

25.12 The Contractor shall remain fully liable for all acts or omissions of any of its Sub-processors.

25.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard

clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

- 25.14 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Officer.
- 25.15 This clause 25 shall apply during the Contract Period and indefinitely after its expiry.

26. FREEDOM OF INFORMATION

- 26.1 The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Contractor shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Customer with a copy of all Information belonging to the Customer requested in the Request For Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
 - (d) not respond directly to a Request For Information unless authorised in writing to do so by the Customer.
- 26.2 The Contractor acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Contractor. The Customer shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Customer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

27. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 27.1 The Contractor shall not make any press announcements or publicise the Contract in any way without the Customer's prior written Approval.
- 27.2 The Customer shall be entitled to publicise the Contract in accordance with any legal obligation on the Customer, including any examination of the Contract by the Auditor.
- 27.3 The Contractor shall not do anything, or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

28. INTELLECTUAL PROPERTY RIGHTS

- 28.1 The Contractor shall retain ownership of all Intellectual Property created by the Contractor or any Staff or Sub-Contractor of the Contractor:
- (a) in the course of performing the Services; or
 - (b) exclusively for the purpose of performing the Services.
- 28.2 The Contractor hereby grants, or shall procure the direct grant, to the Customer of a perpetual, royalty free, irrevocable and non-exclusive licence of the Intellectual Property, and shall allow the Customer to use the Intellectual Property for any purpose relating to the exercise of the business or function of the Customer provided in each case that such rights shall not extend to the commercial exploitation of the Intellectual Property. This licence shall, during its term, include the right to sub-licence to a third party (including, for the avoidance of doubt, any replacement Contractor or other third party invited by the Customer to participate in a tendering process for the award of a contract to deliver replacement services).
- 28.3 The Contractor shall indemnify the Customer against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Customer's acts or omissions.

29. RECORDS AND AUDIT ACCESS

- 29.1 The Contractor shall keep and maintain until six years after the end of the Contract Period (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract

including the Services provided under it, the Contracts entered into with the Customer and the amounts paid by the Customer.

- 29.2 The Contractor shall keep the records and accounts referred to in clause 29.1 above in accordance with good accountancy practice.
- 29.3 The Contractor shall on request afford the Customer, the Customer's representatives and/or the Auditor such access to such records and accounts as may be required by the Customer from time to time.
- 29.4 The Contractor shall provide such records and accounts (together with copies of the Contractor's published accounts) during the Contract Period and for a period of 6 years after the expiry of the Contract Period to the Customer and the Auditor.
- 29.5 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services, except insofar as the Contractor accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.
- 29.6 Subject to the Customer's rights of confidentiality, the Contractor shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the Customer within the scope of the audit;
 - (b) reasonable access to sites controlled by the Contractor and to Equipment used in the provision of the Services; and
 - (c) access to Staff.
- 29.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 29, unless the audit reveals a material Default by the Contractor in which case the Contractor shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

30. REPLACEMENT OF CORRUPTED DATA

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

31. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

- 31.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Customer shall take reasonable steps to investigate the complaint. The Customer may, in its sole discretion, uphold the complaint, and may, acting reasonably apply the Service Credit regime as set out in the Framework Agreement.
- 31.2 If the Customer is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Customer may, without prejudice to its rights under clause 43, do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Customer that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
 - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
 - (c) charge the Contractor for and the Contractor shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 31.3 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Customer shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten Working Days of the Customer's instructions or such other period of time as the Customer may direct.
- 31.4 If the Contractor:
- (a) fails to comply with clause 31.3 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or

- (b) persistently fails to comply with clause 31.3 above,

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

32. RIGHTS AND REMEDIES

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

33. TRANSFER AND SUB-CONTRACTING

33.1 The Contractor shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

33.2 Provided that the Customer has given prior written consent, the Contractor shall be entitled to novate the Contract following the novation of the Framework Agreement where:

- (a) the specific change in Contractor was provided for in the procurement process for the award of the Framework Agreement;
- (b) there has been a universal or partial succession into the position of the Contractor, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

33.3 The Contractor shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

33.4 Where the Customer has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Customer, be sent by the Contractor to the Customer as soon as reasonably practicable.

33.5 The Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- (a) any Contracting Authority;
- (b) any other body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Customer; or

- (c) any private sector body which substantially performs the functions of the Customer,

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

34. WAIVER

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

35. VARIATION

- 35.1 Subject to the provisions of this clause 35, the Customer may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".
- 35.2 The Customer may request a Variation by completing and sending the Contract Change Notice attached at Schedule 9 (the **CCN**) to the Contractor, giving sufficient information for the Contractor to assess the extent of the Variation and any additional cost that may be incurred. The Contractor shall respond to a request for a Variation within the time limits specified in the CCN. Such time limits shall be reasonable having regard to the nature of the Order.
- 35.3 If the Contractor is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Customer may:
 - (a) agree that the Parties continue to perform their obligations under the Contract without the Variation; or
 - (b) terminate the Contract with immediate effect, except where the Contractor has already delivered part or all of the Order in accordance

with the Order Form or where the Contractor can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree on a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

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

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

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

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

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

37. SEVERANCE

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

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

LIABILITIES

38. LIABILITY, INDEMNITY AND INSURANCE

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

- (a) death or personal injury caused by its negligence;
- (b) Fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- (d) any claim under clause 18.6;
- (e) any claim under clause 40; or
- (f) any claim under the indemnity in clause 28.3.

38.2 Subject to clause 38.3 and clause 38.4, the Contractor shall indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.

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

- (a) the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed £1 million and

38.4 Subject to clause 38.1, in no event shall either Party be liable to the other for any:

- (a) loss of profits;
- (b) loss of business;

- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); or
- (f) any indirect or consequential loss or damage.

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

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

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

39. INSURANCES

39.1 The Contractor shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover (the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

39.2 The Contractor shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

39.3 If, for whatever reason, the Contractor fails to give effect to and maintain the Required Insurances, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

39.4 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

39.5 The Contractor shall hold and maintain the Required Insurances for a minimum of six years following the expiry or earlier termination of the Contract.

40. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

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

41. WARRANTIES AND REPRESENTATIONS

The Contractor warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
- (b) the Contract is executed by a duly authorised representative of the Contractor;
- (c) in entering the Contract it has not committed any Prohibited Act;
- (d) as at the Service Commencement Date, all information, statements and representations contained in the Tender for the Services are true, accurate and not misleading except as may have been specifically disclosed in writing to the Customer before execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware during the Contract Period which would render any such information, statement or representation to be false or misleading;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;

- (f) it is not subject to any contractual obligation, compliance with which is likely to have an adverse affect on its ability to perform its obligations under the Contract;
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (h) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (i) the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

DEFAULT, DISRUPTION AND TERMINATION

42. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

- 42.1 Without affecting any other right or remedy available to it, the Customer may terminate this Contract with immediate effect by giving written notice to the Contractor if:
- (a) the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;
 - (b) the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Contractor with one or more other companies or the solvent reconstruction of the Contractor;
 - (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Contractor (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;

- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Contractor (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Contractor (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor;
- (g) the Contractor (being an individual) is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 42.1(a) to clause 42.1(h) (inclusive); or
- (j) the Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

42.2 The Contractor shall notify the Customer immediately if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (**Change of Control**). The Customer may terminate the Contract by notice in writing with immediate effect within six Months of:

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

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

43. **TERMINATION ON DEFAULT**

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

- (a) the Contractor has not remedied the material breach to the satisfaction of the Customer within 20 Working Days, or such other period as may

be specified by the Authority, after issue of a written notice specifying the material breach and requesting it to be remedied; or

- (b) the material breach is not, in the opinion of the Customer, capable of remedy.

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

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

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

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

- (a) the Contractor repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
- (b) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply;
- (c) any warranty given by the Contractor in clause 41 of this Contract is found to be untrue or misleading.

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

44. TERMINATION FOR CONVENIENCE

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

45. CONSEQUENCES OF TERMINATION OR EXPIRY

- 45.1 Where the Customer terminates the Contract under clause 43 and then makes other arrangements for the supply of Services, the Customer may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 43, no further payments shall be payable by the Customer to the Contractor until the Customer has established the final cost of making those other arrangements.
- 45.2 Subject to clause 38, where the Customer terminates the Contract under clause 44, the Customer shall indemnify the Contractor against any reasonable commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause 44.
- 45.3 The Customer shall not be liable under clause 45.2 to pay any sum that:
- (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
 - (b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated before the expiry of the Contract Period.
- 45.4 Except as otherwise expressly provided in the Contract:
- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract before termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
 - (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Contractor under clause 17, clause 18, clause 19, clause 20, clause 23, clause 24, clause 25, clause 26, clause 28, clause 29, clause 32, clause 38, clause 39, clause 40, clause 45, clause 47, and clause 52.

46. DISRUPTION

- 46.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other Contractor employed by the Customer.
- 46.2 The Contractor shall immediately inform the Customer of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 46.3 In the event of industrial action by the Staff, the Contractor shall seek the Customer's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 46.4 If the Contractor's proposals referred to in clause 46.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may:
- (a) require the Contractor to provide alternative proposals; or
 - (b) undertake the services itself and recover from the Contractor the additional costs incurred in the process.
- Subject to clause 46.5, nothing in this clause shall release the Contractor from the proper performance of its obligations under the Contract.
- 46.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

47. RECOVERY ON TERMINATION

- 47.1 On the termination of the Contract for any reason, the Contractor shall:
- (a) immediately return to the Customer all Confidential Information, Personal Data and Customer's Intellectual Property in its possession or in the possession or under the control of any permitted Contractors or Sub-Contractors, which was obtained or produced in the course of providing the Services;
 - (b) immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Contractor

under clause 9. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

- (c) assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to any Replacement Contractor and/or the completion of any work in progress; and
- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Contractor to conduct due diligence.

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

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

48. DISPUTE RESOLUTION

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

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Contract Manager of the Authority and Service Manager of the Contractor shall attempt in good faith to resolve the Dispute;
- (b) if the Contract Manager of The Authority and Service Manager of the Contractor are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Head of Contract Management of the Authority and Director of the Contractor who shall attempt in good faith to resolve it; and
- (c) if the Head of Contract Management of the Authority and Director of the Contractor are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the

mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 20 days after the date of the ADR notice.

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

49. FORCE MAJEURE

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 8 weeks the party not affected may terminate this Contract by giving 30 days' written notice to the affected party.

50. ENTIRE AGREEMENT

- 50.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 50.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract, provided that nothing in this clause 50 shall operate to exclude any liability for fraud.
- 50.3 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the clauses of the Contract;
 - (b) the Order Form
 - (c) the terms of the Framework Agreement, the Schedules to the Framework Agreement and the Order Form
 - (d) any other document referred to in the clauses of the Contract; and

(e) the Contractor's Tender.

- 50.4 This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

51. NOTICES

- 51.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.
- 51.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or by fax or e-mail. Such letters shall be addressed to the other Party in the manner referred to in clause **Error! Reference source not found.** Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours in the case of fax or e-mail, or sooner where the other Party acknowledges receipt of such letters, fax or e-mail.
- 51.3 Either Party may change its address for service by serving a notice in accordance with this clause.

52. GOVERNING LAW AND JURISDICTION

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

Schedule 6 – Outbreak Call-Off Order Form

ORDER FORM

FROM

| | |
|---------------------|--|
| Authority | Secretary of State for Environment, Food and Rural Affairs |
| Address | Defra Group Commercial Room 401, Foss House 1-2 Peasholme Green York YO1 7PX |
| Contact Ref: | Phone: Email: |
| Order Number | |
| Order Date | |

TO

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

1. SERVICES REQUIREMENTS

(1.1) Services [and deliverables] required:

(1.2) Commencement Date:

(1.4) Completion Date:

2. PERFORMANCE OF THE SERVICES [AND DELIVERABLES]

(2.1) Key Personnel of the Contractor to be involved in the Supply of the Services

(2.2) Performance Standards

(2.3) Location(s) at which Services are to be provided:

| |
|--|
| (2.4) Standards: |
| (2.5) Contract Monitoring Arrangements |

| |
|--|
| 3. PRICE AND PAYMENTS |
| (3.1) Contract Price payable by the Authority/Contracting Body (excluding VAT, payment profile and method of payment (e.g. Government Procurement Card (GPC) or BACS)) |
| (3.2) Invoicing and Payment |

| |
|----------------------------------|
| 6. Invoicing Requirements |
| |

BY SIGNING AND RETURNING THIS ORDER FORM THE CONTRACTOR AGREES to enter a legally binding contract with the Authority to provide to the Authority the Services specified in this Order Form, incorporating the rights and obligations in the Call-Off Contract that are set out in the Framework Agreement.

For and on behalf of the Contractor:-

| | |
|----------------|--|
| Name and Title | |
| Signature | |
| Date | |

For and on behalf of the Authority:-

| | |
|----------------|--|
| Name and Title | |
|----------------|--|

| | |
|-----------|--|
| Signature | |
| Date | |

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

Schedule 7 – TR79 (BAU) Call-Off Order Form



Animal &
Plant Health
Agency

Animal and Plant Health Agency

T +44 xxx xxxx xxxx

Service/team

F +44 xxx xxxx xxxx

First address line

Second address line

www.gov.uk/apha

Town/city

Postcode

Insert Valuers Name and Address

00 Month 20XX

Dear Recipient,

Request to value tuberculosis affected animals

Animal Health Act 1981

The Cattle Compensation (England) Order 2012 (as amended)

The Individual Ascertainment of Value (England) Order 2012

The Tuberculosis (England) Order 2014

*The president of the Royal Institution of Chartered Surveyors has nominated you to carry out a valuation in accordance with the relevant legislation. *delete if not applicable.

As arranged please carry out the valuation acting jointly on behalf of APHA and the owner as detailed below:

Name

Address

Phone number

Map reference

On:

Date

Time

To value (enter number of animals) animal(s) as detailed:

| Official Animal ID | Breed | D.O.B. | Sex | Pedigree/Commercial (if known) |
|--------------------|-------|--------|-----|--------------------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

An APHA representative will also be present to identify the cattle, check that they have valid passports and official animal identifiers and mark them separately prior to movement for slaughter. **Valuation must not commence until the APHA representative is present.**

Compensation for animals slaughtered under section 32 of the Animal Health Act 1981 is paid from money raised from the taxpayer, and valuations should be accurate and responsible and made on the basis of true market value.

The valuation should be conducted in accordance with the enclosed 'Valuation Guidance'. I should also advise you that we will/may require supporting information for this particular valuation - this should include, but not be restricted to, comparable sales data.

When valuing these animals consequential losses should not be added to the market value, nor should they be said to be representative of market value.

Please ensure that you abide by strict **biosecurity measures** before, during and after visiting the premises.

As disease is suspected on the premises, protective clothing and footwear MUST be worn and cleansed and disinfected before leaving, approved disinfectant will be provided.

Claims for fees and expenses should be sent to this office after the valuation has been completed, in line with those agreed during the call off process.

Yours sincerely

Name

TB Section

Veterinary Head of Field Delivery/Veterinary Lead Scotland
Head of Field Delivery England/Head of Field Delivery Scotland/Head of Field Delivery Wales

| | | | | | | |
|-----------|-------|--|----------------|--|--------|--|
| HM3 Stamp | Name: | | Date Received: | | WS ID: | |
|-----------|-------|--|----------------|--|--------|--|

Schedule 8 – TR80 (BAU) Call-Off Order Form



Animal &
Plant Health
Agency

Animal and Plant Health Agency

T +44 xxx xxxx xxxx

Service/team

F +44 xxx xxxx xxxx

First address line

Second address line

www.gov.uk/apha

Town/city

Postcode

(Insert Recipients Name and Address)

00 Month 20XX

Dear (Insert Valuer Name)

Request to value tuberculosis affected animals

Animal Health Act 1981

The Tuberculosis (Wales) Order 2010 (as amended)

*The President of the Royal Institution of Chartered Surveyors/Central Association of Agriculture Valuers has nominated you to carry out a valuation in accordance with the relevant legislation.

*delete if not applicable

As arranged please carry out valuation acting jointly on behalf of APHA and the owner as detailed below:

| | |
|----------------------|--|
| Name | |
| Address | |
| Phone number | |
| Map reference | |

On:

| | |
|-------------|--|
| Date | |
| Time | |

To value (enter number of animals) animal(s) as detailed:

| Official ID | Animal | Breed | D.O.B | Sex | Pedigree/ commercial (if known) |
|-------------|--------|-------|-------|-----|---------------------------------|
| | | | | | |
| | | | | | |
| | | | | | |

An APHA representative will/will not be present.

Compensation for animals slaughtered under section 32 of the Animal Health Act 1981 is paid from money raised from the taxpayer, and that valuations should be accurate and responsible and made on the basis of true market value. The purchase price of the animal should be taken into account, where applicable. You should establish whether the animal was purchased within the previous 12 months and, if so, request details of the purchase price and to see the relevant sales documentation. The valuation should also reflect the physical condition of the animal(s) at the time of valuation.

The valuation should be conducted in accordance with the enclosed 'Valuation Guidance'. I should also advise you that Welsh Government will/may require to see supporting information for this particular valuation - this should include, but not be restricted to, comparable sales data.

Automatic Justification will be required where:

- Pedigree animals are valued at £3000 or over, and
- Commercial animals are valued at £1800 or over.

In order to justify these valuations digital photography and/or video footage are requested to support a valuer's written justification.

When valuing these animals consequential losses should not be added to the market value, nor should they be said to be representative of market value.

Please ensure that you abide by strict **biosecurity measures** before, during and after visiting the premises.

As disease is suspected on the premises, protective clothing and footwear MUST be worn and cleansed and disinfected before leaving, approved disinfectant will be provided.

Claims for fees and expenses should be sent to this office after the valuation has been completed, in line with those agreed during the call off process.

Yours sincerely,

Name

TB Section

For the Veterinary Lead Wales/Head of Field Delivery Wales

| | | | | | | |
|-----------|-------|--|----------------|--|--------|--|
| HM3 Stamp | Name: | | Date Received: | | WS ID: | |
|-----------|-------|--|----------------|--|--------|--|

Schedule 9 – TR91 (BAU) Call-Off Order Form



Animal &
Plant Health
Agency

Animal and Plant Health Agency T +44 xxx xxxx xxxx

Service/team F +44 xxx xxxx xxxx

First address line

Second address line www.gov.uk/apha

Town/city

Postcode

(Insert Recipients Name and Address)

00 Month 20XX

Dear Recipient,

Request to value tuberculosis affected animals

Further to our telephone call please arrange to carry out a valuation on behalf of the Animal and Plant Health Agency (APHA) as follows:

| | |
|---------------------------------------|--|
| Premises Details | |
| Owner Name | |
| Owner Telephone | |
| Keeper Details | |
| Keeper Telephone | |
| Number of animals to be valued | |

The herd owners have appointed name of company to carry out a valuation on their behalf and an appointment has been made to visit the farm for this purpose at time am/pm on date.

Will you please arrange to attend at that time with a view to reaching agreement with on the values of the cattle involved. An APHA representative will be present to identify the cattle, check they have valid passports and to mark them separately prior to movement for slaughter.

The animal details are as follows:

| | | | | |
|---------------------------|-----------------|--------------|--------------|------------|
| Official Animal ID | Other ID | Breed | D.O.B | Sex |
|---------------------------|-----------------|--------------|--------------|------------|

| | | | | |
|--|--|--|--|--|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

This valuation should be conducted in accordance with the enclosed guidance notes and should not take into account any consequential losses, nor the purchase price of the animals where this is likely to be out of line with their market value.

Should it not be possible to reach agreement on the values of one or more animals APHA will request the Royal Institution of Chartered Surveyors/President of the Institute of Auctioneers and Appraisers/Central Association of Agricultural Valuers to nominate a valuer to value the animals in question.

Yours sincerely,

Name

TB Section

Veterinary Lead Scotland/Head of Field Delivery Scotland

Notes:

1. A reactor is an animal which when tested for tuberculosis by or on behalf of APHA has given rise to a reaction consistent with its being infected with that disease.
2. A contact is an animal which, having been exposed to the infection of tuberculosis, it is proposed shall be slaughtered at the discretion of APHA.
3. The market value of a reactor or contact shall be the price which might reasonably have been obtained for it at the time of valuation from a purchaser in the open market as if it were an animal:
 - not designated a reactor or contact, and
 - which has not been exposed to the infection of tuberculosis.
4. Claims for fees and expenses in accordance with the enclosed scales should be sent to this office after the valuation has been completed

| | | | | | | |
|------------------|-------|--|----------------|--|--------|--|
| HM3 Stamp | Name: | | Date Received: | | WS ID: | |
|------------------|-------|--|----------------|--|--------|--|

SCHEDULE 10 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS

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

Defra Group Commercial
DGC.GDPR@defra.gov.uk

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

[REDACTED]
[REDACTED]

4. The Contractor shall comply with any further written instructions with respect to processing by the Authority.
5. Any such further instructions shall be incorporated into this Schedule.

| Data Processing Descriptor | Narrative |
|--|---|
| Identity of the Controller and Processor | The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor in accordance with Clause E2.1. |
| Subject matter of the processing | The processing is required in order to ensure that the Processor can effectively deliver Valuation Services to assist the Authority during disease outbreak events and duly compensate farmers for losses. |
| Duration of the processing | The duration of the Framework Agreement: 08/10/2020 – 07/10/2024 |
| Nature and purposes of the processing | <p>Nature: Collection, storage, and use.</p> <p>Purpose: to attend infected premises (IPs) during a disease outbreak event in order to carry out valuations of livestock and equipment for compensation purposes.</p> <p>The Processor will need the address of the IP in order to locate the site, and in some cases may be provided with additional contact details of the owner if required.</p> <p>The Processor may also be privy to the farmers financial data through the valuation process.</p> |

| | |
|--|--|
| Type of Personal Data | Name, address, telephone number, farmer's business/financial data (including assets). |
| Categories of Data Subject | Owners of the infected premises (usually farms) and potentially employees at that site. |
| <p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p> | <p>In accordance with clause 13.4(e): at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.</p> |

Schedule 11 - Framework Agreement Variation Procedure

1. INTRODUCTION

- 1.1 Schedule 8 details the scope of the variations permitted and the process to be followed where the Authority proposes a variation to the Framework Agreement.
- 1.2 The Authority may propose a variation to the Framework Agreement under Schedule 8 only where the variation does not amount to a material change in the Framework Agreement or the Services.

2. PROCEDURE FOR PROPOSING A VARIATION

- 2.1 Except where paragraph 5 applies, the Authority may propose a variation using the procedure contained in this paragraph 2.
- 2.2 In order to propose a variation, the Authority shall serve each Framework Provider with written notice of the proposal to vary the Framework Agreement (**Schedule 9: Contract Change Notice**).
- 2.3 The Contract Change Notice shall:
 - (a) contain details of the proposed variation providing sufficient information to allow each Framework Provider to assess the variation and consider whether any changes to the prices set out in its Pricing Matrices are necessary; and
 - (b) require each Framework Provider to notify the Authority within 10 days of any proposed changes to the prices set out in its Pricing Matrices.
- 2.4 On receipt of the Contract Change Notice, each Framework Provider has 20 Working Days to respond in writing with any objections to the variation.
- 2.5 Where the Authority does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Authority may then serve each Framework Provider with a written agreement detailing the variation to be signed and returned by each Framework Provider within 10 days of receipt. Execution of a Variation is made via electronic signature.
- 2.6 On receipt of a signed agreement from each Framework Provider, the Authority shall notify all Framework Providers in writing of the commencement date of the variation.

3. OBJECTIONS TO A VARIATION

In the event that the Authority receives one or more written objections to a variation, the Authority may:

- (a) withdraw the proposed variation; or
- (b) propose an amendment to the variation.

4. CHANGES TO THE PRICING MATRICES

4.1 Where a Framework Provider can demonstrate that a variation would result in a change to the prices set out in its Pricing Matrices, the Authority may require further evidence from the Framework Provider that any additional costs to the Framework Provider will be kept to a minimum.

4.2 The Authority may require the Framework Provider to meet and discuss any proposed changes to the Pricing Matrices that would result from a variation.

4.3 Where a change to a Framework Provider's Pricing Matrices is agreed by the Authority, the Authority shall notify its acceptance of the change to the Framework Provider in writing.

4.4 In the event that the Authority and the Framework Provider cannot agree to the changes to the Pricing Matrices, the Authority may:

- (a) withdraw the variation; or
- (b) propose an amendment to the variation.

5. VARIATIONS THAT ARE NOT PERMITTED

In addition to the provisions contained in paragraph 1.2, the Authority may not propose any variation that:

- (a) may prevent one or more of the Framework Providers from performing its obligations under the Framework Agreement; or
- (b) is in contravention of any Law.

Schedule 12 - Contract Change Notice (CCN)



Department
for Environment
Food & Rural Affairs

[CONTRACT / FRAMEWORK AGREEMENT] CHANGE NOTE

| | |
|--|--|
| Contract Change Note Number | |
| Contract Reference Number and Title | |
| Variation Title | |
| Number of Pages | |

Whereas the [Contractor] and the Authority entered into a [Contract/Framework Agreement] for the provision of [contract title] dated [dd/mm/yyyy] (the "Original Contract/Framework Agreement") and now wish to amend the Original [Contract/Framework Agreement].

It is agreed as follows:

1. With effect from [dd/mm/yyyy] the Original [Contract/Framework Agreement] shall be amended as set out in this Contract/Framework Change 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 A) | |
| 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.

Execution of the Contract Change Note is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The revised Contract is formed on the date on which both Parties communicate acceptance of its terms on the Authority's electronic contract management system ("Bravo").