



Department
for Environment
Food & Rural Affairs

www.gov.uk/defra

On Farm Kill and Carcase Collection Services Framework Agreement

Reference: Project 23866

March 2019

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SECTION 1

FORM OF AGREEMENT

THIS AGREEMENT is made on the 1st April 2019

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS** of Nobel House, 17 Smith Square, London, SW1P 3JR (the “**Authority**”);
- AND
- (2) **W MARTIN & SON LIMITED** (registered in England and Wales under number 7525681) whose registered office is The Octagon, Suite E2, 2nd Floor, Middleborough, Colchester, Essex, CO1 1TG (the “**Provider**”)

WHEREAS:

- (A) The Authority placed contract notice 2018/S 234-534974 on 30/11/2018 in the Official Journal of the European Union to establish a multiple source framework for the supply of On Farm Kill and Carcase Collection Services.
- (B) On the basis of the Provider’s tender, the Authority selected the Provider to enter into a framework agreement to provide Services to the Authority and any Contracting Body on a Call-Off basis in respect of the Provider’s lot(s) in accordance with this Framework Agreement.
- (C) This Framework Agreement sets out the terms and conditions on which the Provider will supply the Services to the Authority and any Contracting Body and the procedure that the Authority and any Contracting Body will use to order Services from the Provider.
- (D) There is no obligation for the Authority and/or any Contracting Body to place orders with the Provider under this Framework Agreement.

NOW IT IS HEREBY AGREED as follows:

TERMS OF THIS FRAMEWORK AGREEMENT

1. The Authority appoints the Provider as a potential provider of Services in accordance with the terms and conditions of this Framework Agreement which comprises all the documents set out below and incorporates all the Standard Terms and Conditions set out in Section 2 and the Schedules and Appendices below.

2. This Framework Agreement comprises the following:

Section 1 Parties, Recitals, Terms, Signatures

Section 2 Standard Terms and Conditions of Framework Agreement

Schedule 1 Definitions

Schedule 2 Specification

Appendix A Geographical Regions Maps

Appendix B List of Outcodes and maps of assigned areas

Appendix C Performance Management Framework

Appendix D Governance and Contract Management

Schedule 3 Pricing Matrix

Schedule 4 Call Off Procedure

Schedule 5 Call Off Terms and Conditions

Schedule 6 Order Forms

Schedule 7 Data Processing Schedule

Schedule 8 Business Continuity and Disaster Recovery

Schedule 9 Change Control Notice

Schedule 10 Non-disclosure Agreement

Schedule 11 Commercially Sensitive Information

3. 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**").

SECTION 2

STANDARD TERMS AND CONDITIONS OF FRAMEWORK AGREEMENT

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Framework Agreement, unless the context otherwise requires:
- 1.1.1 capitalised expressions shall have the meanings set out in Schedule 1 to this Framework Agreement or the relevant Framework Agreement schedule in which that capitalised expression appears;
 - 1.1.2 if a capitalised expression does not have an interpretation in Schedule 1 to this Framework Agreement or the relevant Framework Agreement schedule, it shall have the meaning given to it in this Framework Agreement. If no meaning is given to it in this Framework Agreement, it shall in the first instance be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning;
 - 1.1.3 words importing the singular meaning include, where the context so admits, the plural meaning and vice versa;
 - 1.1.4 words importing the masculine include the feminine and the neuter;
 - 1.1.5 reference to a clause is a reference to the whole of that clause unless stated otherwise;
 - 1.1.6 references to any statutory provision, enactment order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;
 - 1.1.7 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees; and
 - 1.1.8 the words “other”, “in particular”, “for example”, “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”.
- 1.2 Subject to clause 1.3, in the event and to the extent only of a conflict between any of the provisions of this Framework Agreement, the conflict shall be resolved, in accordance with the following descending order for precedence:

- 1.2.1 Section 1: Parties, Recitals, Terms, Signatures and Section 2: Standard Terms and Conditions of Framework Agreement and Framework Agreement Schedule 1 Definitions; and
 - 1.2.2 Framework Agreement Schedules 2-10 inclusive.
- 1.3 If there is any conflict between the provisions of this Framework Agreement and provisions of any Call-Off Contract, the provisions of the Framework Agreement shall prevail over those of the Call-Off Contract save that:
 - 1.3.1 any special conditions or variations set out in the Order Form (provided that such conditions or such variations do not amount to a material change of this Framework Agreement within the meaning of the Public Contracts Regulations) forming part of the Call-Off Contract shall prevail over the Framework Agreement and the Call-Off Terms and Conditions set out in Schedule 5.

2 TERM OF FRAMEWORK AGREEMENT

- 2.1 This Framework Agreement commences on the date set out at the top of section 1 (the “**Framework Commencement Date**”) and shall expire at the end of the fourth (4th) Contract Year, unless it is terminated earlier in accordance with the terms of this Framework Agreement or otherwise by operation of Law.

3 SCOPE OF THE FRAMEWORK AGREEMENT

- 3.1 This Framework Agreement governs the relationship between the Authority and the Provider in respect of the provision of the Services by the Provider to a Contracting Body.
- 3.2 A Contracting Body (subject to the following provisions) may at its absolute discretion and from time to time order Services from the Provider in accordance with the Call-Off Contract award procedure specified in clause 6.
- 3.3 The Provider acknowledges that there is no obligation for the Authority or any Contracting Body to purchase any Services from the Provider during the term of the Framework Agreement.
- 3.4 The Parties agree that the Authority, on its own behalf and as agent for each of the Customers, shall:
 - 3.4.1 have conduct of all claims and disputes against the Provider pursuant to this Framework Agreement (with Customers having the right to conduct enforcement actions pursuant to their individual Call-Off Contracts);
 - 3.4.2 agree any variations to this Framework Agreement on behalf of all Contracting Bodies without their specific consent;
 - 3.4.3 have the right to enforce the terms, conditions, undertakings, representations, warranties and other provisions of this Framework Agreement; and
 - 3.4.4 recover loss suffered by any of the Customers.

4 PROVIDER'S APPOINTMENT

- 4.1 The Authority appoints the Provider as a potential provider of the Services referred to in the Provider's Lots and the Provider shall be eligible to be considered for the award of orders for such Services in the Lots which they have been awarded, by a Contracting Body during the term of the Framework Agreement.

5 NON-EXCLUSIVITY

- 5.1 The Provider acknowledges that, in entering into this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Authority and any Contracting Body for Services from the Provider and that the Contracting Bodies are at all times entitled to enter into other contracts and arrangements with other providers and any other third parties for the provision of any or all Services which are the same as or similar to the Services.

6 CALL-OFF CONTRACT AWARD PROCEDURE

- 6.1 If a Contracting Body has a requirement for any of the Services in respect of any Lot to which the Provider has been appointed, the Contracting Body may award a Call-Off Contract to the Provider in accordance with the terms laid down in Schedule 4 Call-Off Procedure. The applicable Selection Methodology and order procedure differs depending on the Lot into which the relevant Services and requirements fall and is specified in Schedule 4.
- 6.2 Any Contracting Body ordering Services under the Framework Agreement shall:
- 6.2.1 identify the relevant Lot into which its Services and requirements fall and which Selection Methodology is applicable;
 - 6.2.2 if its Services and requirements fall within Lots 3 to 4, determine whether to utilise the Mini-competition approach or whether to apply the direct award procedure;
 - 6.2.3 notify the successful Provider(s) of an Order following the process set out in Schedule 4 Call-Off Procedure.
- 6.3 If the Provider:
- 6.3.1 notifies the Contracting Body that it declines to accept an order for Services;
or
 - 6.3.2 the applicable time-limit for responding to an order for Services referred to in Schedule 4 has expired;
- then the offer from the Contracting Body to the Provider shall lapse and the relevant Contracting Body may offer that order for Services to the next applicable Provider in accordance with the Selection Methodology.
- 6.4 The Provider in agreeing to accept an Order pursuant to the procedure specified in Schedule 4 shall be deemed to have entered into a Call-Off Contract with the relevant Contracting Body for the provision of Services referred to in the Order Form (or, where

an order may be placed verbally in accordance with Schedule 4, the verbal order placed in accordance with the procedure specified in Schedule 4).

- 6.5 Each Call-Off Contract shall have a maximum Contract Period of two years, unless otherwise approved by the Authority.

7 RESPONSIBILITY FOR AWARDS

- 7.1 The Provider acknowledges that each Contracting Body is independently responsible for the conduct of its award of Call-Off Contracts under the Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:

- 7.1.1 the conduct of any Contracting Body (except the Authority) in relation to the Framework Agreement; or
- 7.1.2 the performance or non-performance of any Call-Off Contracts between the Provider and any Contracting Body (except the Authority) entered into pursuant to the Framework Agreement.

8 WARRANTIES AND REPRESENTATIONS

- 8.1 The Authority and the Provider warrant and represent to each other that:
- 8.1.1 each party has full capacity and authority to enter into and perform its obligations under this Framework Agreement;
 - 8.1.2 this Framework Agreement is executed by a duly authorised representative of each party;
 - 8.1.3 each party has not committed and will not commit any fraud by entering into this Framework Agreement.
- 8.2 The Provider warrants and represents to the Authority and to each of the other Contracting Authorities that:
- 8.2.1 all information, statements and representations contained in its response to the Invitation to Tender are true and accurate and not misleading and that information, statements and representations made in tendering for work under the Call-Off process will be true and accurate;
 - 8.2.2 no claim is being asserted and no litigation or similar action or potential litigation is being taken against it that might affect its ability to provide its obligations under this Framework Agreement or any Call-Off Contract;
 - 8.2.3 it is not subject to any contractual obligation that is likely to have a detrimental effect on its ability to perform its obligations under this Framework Agreement or any Call-Off Contract;
 - 8.2.4 it has not committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, save where details of any such

arrangement have been disclosed in writing to the Authority before the Framework Commencement Date;

8.2.5 it has not been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act;

8.2.6 it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority or any Contracting Body, or that an agreement has been reached to that effect, in connection with the execution of the Framework Agreement or any Call-Off Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority or relevant Contracting Body before execution of the Framework Agreement or Call-Off Contract.

8.2.7 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Provider's obligations, all licences, authorisations, permits and necessary consents under the Framework Agreement;

8.2.8 neither the Provider nor any of its Staff or other persons associated with it:

8.2.8.1 has been convicted of any offence involving slavery and human trafficking; and

8.2.8.2 to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking

8.2.9 neither the Provider nor any of its Staff or other persons associated with it is currently nor has previously been subject to either formal criminal investigation or to a prosecution involving any animal health, animal welfare, animal transport or animal by-product related offences, save where full details of any such investigation or prosecution have been disclosed in writing to the Authority or relevant Contracting Body before execution of the Framework Agreement or Call-Off Contract.

8.3 Each of the representations and warranties set out in clauses 8.1 and 8.2 shall be construed as a separate warranty and representation and shall not be limited or restricted by reference to or inference from the terms of any other representation, warranty or any other undertaking in this Framework Agreement.

8.4 If at any time the Provider becomes aware that a representation or warranty given by it under clauses 8.1 and 8.2 has been breached, is untrue or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.

8.5 For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of the breach of that provision by the Provider which constitutes a Default of this Framework Agreement.

9 PERFORMANCE

- 9.1 The Provider shall perform all Call-Off Contracts entered into with a Contracting Body in accordance with the requirements of the Order Form, this Framework Agreement and the Call-Off Contract, including but not limited to the Specification and any protocols, policies or other documents referred to therein.
- 9.2 Wherever reasonably requested to do so by the Authority, the Provider shall cooperate fully with any Contracting Body and its representatives in providing the Services, and with other contractors providing services at the Premises.
- 9.3 The Provider shall provide all equipment, consumables, plant, materials and other such items and resources necessary for the supply of the Services, unless otherwise agreed by a Customer in an Order Form or under a Call-Off Contract.
- 9.4 The Provider shall at all times during the Framework Agreement comply with the Specification set out in Schedule 2 and obligations during the term of the Framework Agreement set out in the remaining Schedules.
- 9.5 The Provider shall:
 - 9.5.1 obtain and maintain all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable the provision of any of the Services;
 - 9.5.2 provide the Authority with such assistance as the Authority may reasonably require during the Framework Term in connection with the management and administration of this Framework Agreement; and
 - 9.5.3 promptly notify the Authority in the event that it undergoes a Change of Control.
- 9.6 Where this Framework Agreement places an obligation on the Provider to do, or refrain from doing, any act or thing, this will also mean that the Provider shall use reasonable endeavours to procure that all Sub-Contractors and Staff also do, or refrain from doing, such act or thing.
- 9.7 The Provider shall develop and maintain a disaster recovery plan in accordance with Schedule 8 for use in the case of a disaster or other event (or combination of events) that might result in the loss or partial loss of availability of Services and shall, in the case of a disaster arising, implement that plan in accordance with Schedule 8.

10 PREVENTION OF FRAUD AND BRIBERY

- 10.1 The Provider shall not:
 - 10.1.1 commit a Prohibited Act; and/or
 - 10.1.2 do or suffer anything to be done which would cause the Authority, any Contracting Body or any of their respective employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

- 10.2 The Provider shall, during the Term of this Framework Agreement:
- 10.2.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - 10.2.2 keep appropriate records of its compliance with its obligations under clause 10.1.1 and make such records available to the Authority on request.
- 10.3 The Provider shall immediately notify the Authority in writing if it becomes aware of a breach of this clause 10 or has reason to believe that it has or any of the Staff have:
- 10.3.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 10.3.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 10.3.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of Services or otherwise suspects that any person directly or indirectly connected with the performance of Services has committed or attempted to commit a Prohibited Act.
- 10.4 The Provider shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, records and/or any other relevant documentation in connection with any breach, or suspected breach of this clause 10.
- 10.5 If the Provider is in Default under clause 10.1, the Authority may by notice:
- 10.5.1 require the Provider to remove from performance of Services any Staff whose acts or omissions have caused the Default; or
 - 10.5.2 immediately terminate this Framework Agreement.
- 10.6 Any notice served by the Authority under clause 10.5 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract shall terminate).
- 10.7 Any termination under this clause 10 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

11 DISCRIMINATION

- 11.1 The Provider shall provide the Services and perform its obligations under this Framework Agreement in accordance with:

- 11.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
 - 11.1.2 the Authority and/or a Customer's equality and diversity policy as given to the Provider from time to time; and
 - 11.1.3 any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law.
- 11.2 The Provider shall take all necessary steps to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation). The Provider shall inform the Authority on request of the steps taken to comply with this clause.

12 STAFF

- 12.1 The Provider shall:
- 12.1.1 ensure that all Staff:
 - 12.1.1.1 are appropriately qualified, trained and experienced to perform its obligations under this Framework Agreement and to provide the Services under a Call-Off Contract with reasonable skill, care and diligence;
 - 12.1.1.2 when attending the Premises, comply with all instructions of the Authority's or Customer's representative in control of the Premises;
 - 12.1.1.3 in respect of the provision of Services, are lawfully entitled to work in the United Kingdom.
 - 12.1.2 retain overall control of the Staff at all times so that the Staff shall not be deemed to be employees, agents, workers or contractors of the Authority or any Customer;
 - 12.1.3 comply with all applicable Laws relating to its Staff, in particular, the Modern Slavery Act 2015, the Gangmasters (Licensing) Act 2004 and the Working Time Regulations 1998 (SI 1998/1833) (as amended);
 - 12.1.4 be liable at all times for all acts and omissions of Staff, so that any act or omission of Staff which results in a Default under this Framework Agreement or any Call-Off Agreement shall be a Default by the Provider.
- 12.2 This Framework Agreement and all Call-Off Contracts entered into pursuant to its terms shall constitute a contract for the provision of services and not a contract of employment and accordingly, the Provider shall be fully responsible for and shall indemnify the Authority for and in respect of any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Provider or any of its Staff against the Authority arising out of or in connection with the provision of the Services, including any claims or actions brought under the Agency Workers Regulations 2010 (SI 2010/93).

- 12.3 If the Authority reasonably believes that any of the Staff are unsuitable to undertake work in respect of this Framework Agreement (including where Staff have failed to comply with instructions on the Premises as required under clause 12.1.1.2 above), it may direct the Provider to end the involvement of the relevant Staff in any work connected to this Framework Agreement and/or assign an appropriate member of Staff to supervise such work or take over the role of the member of Staff so deemed as unsuitable (at the Provider's expense).
- 12.4 The Provider shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 12.5 The Provider undertakes not to purchase any materials or services from producers, farmers or manufacturers where it has actual knowledge that those producers, farmers or manufacturers are using forced labour in their operations.
- 12.6 In addition to the record keeping requirements in clause 21 of the Framework Agreement and any specific record-keeping obligations under a Call-Off Contract, the Provider shall:
- 12.6.1 maintain a complete set of records to trace the supply chain of all Services provided to Customers in connection with this Framework Agreement; and
 - 12.6.2 implement annual supplier and subcontractor audits, either directly or through a third party auditor to monitor compliance with the anti-slavery Laws.
- 12.7 The Provider shall notify the Authority (and any Customers with which it has entered a Call-Off Contract) as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Framework Agreement.

13 PRICES FOR SERVICES

- 13.1 The prices offered by the Provider for Call-Off Contracts to Contracting Authorities for the Services shall be calculated at rates not exceeding those rates listed in the Pricing Matrix for the relevant Provider's Lot. Subject to any variations made in accordance with clause 13.2, the prices listed in the Pricing Matrix shall apply throughout the Framework Term.
- 13.2 For Lots 1 and 2 only, the Provider is entitled to propose a variation to the rates listed in the Pricing Matrix once per year. Any proposed variation to the rates should be submitted in writing, including appropriate justification to support the proposal, to the Contract Manager at least two (2) calendar months before the variation is proposed to take effect. Justification should include the reasons for requesting the variation, for example detailing any increase in costs for a specific area of Service, including reasons for any rate decrease. The Authority reserves the right to refuse a proposed variation if it considers that appropriate justification for the variation is not provided, or if it exceeds the average rate of inflation as measured by the CPI over each complete month of the current financial year. Any agreed variation shall be recorded in a Change

Control Notice and will take effect on the next anniversary of the Framework Commencement Date.

- 13.3 For Lots 1 and 2 only, the Authority is entitled to propose a variation to the rates listed in the Pricing Matrix once per year. Any proposed variation to the rates should be submitted in a Change Control Notice as set out in Schedule 9, including appropriate justification to support the proposal, to the Provider at least two (2) calendar months before the variation is proposed to take effect. Any agreed variation will take effect on the next anniversary of the Framework Commencement Date.

14 TAX COMPLIANCE

- 14.1 If, during the term of this Framework Agreement, an Occasion of Tax Non-Compliance occurs, the Provider shall:
- 14.1.1 notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
 - 14.1.2 promptly provide to the Authority:
 - 14.1.2.1 details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
 - 14.1.2.2 such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 14.2 If the Provider or any Staff are liable to be taxed in the UK or to pay National Insurance Contributions in respect of consideration received under a Call-Off Contract, the Provider shall:
- 14.2.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all Laws relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other Laws relating to National Insurance Contributions ("NICs"), in respect of that consideration; and
 - 14.2.2 indemnify the Authority against any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Provider or any Staff.

15 OFFICIAL SECRETS ACT, FINANCE ACT

- 15.1 The Provider shall comply with, and shall ensure that its Staff comply with, the provisions of:
- 15.1.1 the Official Secrets Acts 1911 to 1989; and
 - 15.1.2 Section 182 of the Finance Act 1989.
- 15.2 In the event that the Provider or its Staff fail to comply with this clause 15, the Authority reserves the right to terminate or suspend the Framework Agreement by giving notice in writing to the Provider.

- 15.3 A suspension notice given to a Provider pursuant to clause 15.2 must specify the period of suspension.

16 CONFIDENTIAL INFORMATION

- 16.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in any Call-Off Contract, the Provider shall treat all Confidential Information supplied by, concerning, belonging or relating to the Authority as confidential and in accordance with the HMG Security Policy Framework and shall not disclose any such Confidential Information to any other person without the prior written consent of the Authority, except to such persons and to such extent as may be necessary for the performance of the Provider's obligations under the Framework Agreement.
- 16.2 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Framework Agreement or any Call-Off Contract, the Authority shall treat all Confidential Information of the Provider as confidential and shall not disclose any such Confidential Information to the Provider to any other person without the prior written consent of the Provider, except to such persons and to such extent as may be necessary for the performance of the Authority's obligations under the Framework Agreement.
- 16.3 Where required by the Authority and/or a Customer, the Provider shall ensure that Staff, Sub-Contractors, professional advisors and consultants sign a non-disclosure agreement in substantially the form attached in Schedule 10 of the Framework Agreement prior to commencing any work in connection with the Framework Agreement. The Provider shall maintain a list of the non-disclosure agreements completed in accordance with this clause 16.3. Where requested by the Authority, the Provider shall provide the Authority with a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Provider shall ensure that its Staff, Sub-Contractors, professional advisors and consultants are aware of the Provider's confidentiality obligations under the Framework Agreement.
- 16.4 The Provider may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality, including but not limited to the HMG Security Policy Framework.
- 16.5 The Provider shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of the Framework Agreement.
- 16.6 Clause 16.1 and 16.2 shall not apply to the extent that:
- 16.6.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;

- 16.6.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 16.6.3 such information was obtained from a third party without obligation of confidentiality;
 - 16.6.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Framework Agreement or Call-Off Contract; or
 - 16.6.5 it is independently developed without access to the other party's Confidential Information.
- 16.7 Nothing in clauses 16.1 and 16.2 shall prevent the Authority disclosing any Confidential Information obtained from the Provider:
- 16.7.1 for the purpose of the examination and certification of the Authority's accounts; or
 - 16.7.2 for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
 - 16.7.3 to any government department, Crown Body or any Contracting Body and the Provider hereby acknowledges that all government departments, Crown Body or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments, Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department, Crown Body or any Contracting Body; or
 - 16.7.4 to any consultant, contractor or other person engaged by the Authority, provided that in disclosing information under sub-clauses 16.7.3 and 16.7.4 the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 16.8 Nothing in clauses 16.1 to 16.2 shall prevent the Authority or the Provider from using any techniques, ideas or Know-How gained during the performance of its obligations under the Framework Agreement in the course of its normal business, to the extent that this does not result in a disclosure of the other party's Confidential Information or an infringement of the other party's Intellectual Property Rights.
- 16.9 The Authority shall use all reasonable endeavours to ensure that any government department, Crown Body, Contracting Body, employee, third party or Sub-Contractor to whom the Provider's Confidential Information is disclosed pursuant to this clause 16 is made aware of the Authority's obligations of confidentiality.
- 16.10 The Authority reserves the right to terminate or suspend the Framework Agreement in the event that the Provider or its Staff fail to comply with this clause 16. A suspension notice given to a Provider pursuant to this clause must specify the period of suspension.

- 16.11 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services under the Call-Off Contract, the Provider undertakes to maintain adequate and proportionate security arrangements that meet the requirements of professional standards and best practice and requirements of the HMG Security Policy Framework.
- 16.12 The Provider will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services under a Call-Off Contract and will keep a record of such breaches. The Provider will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Provider's obligations under clauses 16.1 to 16.5. The Provider will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 16.13 The Provider shall, at its own expense, alter any security systems at any time for the duration of the Framework Agreement at the Authority's request if the Authority reasonably believes the Provider has failed to comply with clause 16.11.
- 16.14 All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Authority and notified to the Authority, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
- 16.15 In the event that the Provider fails to comply with any of the provisions in clause 16, the Provider agrees that monetary damages would not be a sufficient remedy for breach and that the Authority shall be entitled, without prejudice to any other rights or remedies that may be available, to seek injunctive relief without proof of special damages, or any other equitable relief or remedy for any threatened or actual breach of the obligations in clause 16.
- 16.16 The Provider hereby gives its consent for the Authority to publish the whole of this Framework Agreement (subject to the application of any redactions which the Authority considers appropriate applying the principles for withholding disclosure set out in clause 17.3 below) including from time to time agreed changes to the Framework Agreement, to the general public.

17 FREEDOM OF INFORMATION

- 17.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- 17.2 The Provider shall and shall procure that any Sub-Contractor shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information:

- 17.2.1 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
 - 17.2.2 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA and/or regulation 5 of the Environmental Information Regulations.
- 17.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Framework Agreement or any Call-Off Contract or any other agreement whether any Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Information Regulations.
- 17.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 17.5 The Provider acknowledges that (notwithstanding the provisions of clause 16 (Confidential Information)) the Authority may be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Provider or the Services in certain circumstances:
 - 17.5.1 without consulting the Provider; or
 - 17.5.2 following consultation with the Provider and having taken its views into account;provided always that the Authority shall, in accordance with any recommendations of the Codes of Practice under the FOIA or the Environmental Information Regulations, take reasonable steps, where appropriate, to give the Provider advance notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- 17.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 17.7 The Provider acknowledges that identifying Information as being Commercially Sensitive Information is of indicative value only and that the Authority may be obliged to disclose it in accordance with this clause 17.
- 17.8 The Authority shall not be liable for any loss, damage, harm or other detriment suffered by the Provider arising from the disclosure of any Information falling within the scope of the FOIA and/or the Environmental Information Regulations (including Commercially Sensitive Information).

18 DATA PROTECTION

- 18.1 The Parties acknowledge that for the purposes of the Data Protection Legislation:
 - 18.1.1 the Customer is the Controller and the Provider is the Processor of the Personal Data specified in Schedule 7; and

- 18.1.2 the parties may provide each other with Personal Data relating to persons employed by them and their agents, suppliers and Sub-Contractors for purposes of administering the Framework Agreement and each Party will be an independent Controller of such Personal Data (because the Parties each, independently of each other, determine the means and purposes of processing such Personal Data).
- 18.2 Both parties will duly observe all their obligations under the Data Protection Legislation which arise in connection with the Framework Agreement.
- 18.3 Each party will, prior to providing Personal Data of which it is the Controller to the other, be responsible for ensuring the Data Subject has received adequate privacy information in accordance with GDPR Article 13 to enable the receiving party to process the Personal Data as permitted under clause 18.4 or 18.5 (as applicable).
- 18.4 The only processing of Personal Data specified in clause 18.1.1 that the Provider is authorised to do is listed in Schedule 7 by the Authority and may not be determined by the Provider. The Provider shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 18.5 The only processing of Personal Data specified in clause 18.1.2 that the parties are authorised to do is processing for purposes administration of the Framework Agreement.
- 18.6 The Provider 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:
- 18.6.1 a systematic description of the envisaged processing operations and the purpose of the processing;
- 18.6.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- 18.6.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
- 18.6.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 18.7 The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Framework Agreement:
- 18.7.1 process that Personal Data only in accordance with Schedule 7 unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- 18.7.2 ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:
- (i) nature of the data to be protected;

- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

18.7.3 ensure that:

- (i) the Staff do not process Personal Data except in accordance with this Framework Agreement (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 Provider's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Provider 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

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

- (i) the Authority or the Provider 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 Provider 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 Provider complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

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

18.8 Subject to clause 18.9 the Provider shall notify the Authority immediately if, in relation to any Personal Data processed in connection with its obligations under this Framework Agreement, it:

- 18.8.1 receives a Data Subject Request (or purported Data Subject Request);
 - 18.8.2 receives a request to rectify, block or erase any Personal Data;
 - 18.8.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 18.8.4 receives any communication from the Information Commissioner or any other regulatory authority;
 - 18.8.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 18.8.6 becomes aware of a Data Loss Event.
- 18.9 The Provider's obligation to notify under clause 18.8 shall include the provision of further information to the Authority in phases, as details become available.
- 18.10 Taking into account the nature of the processing, the Provider 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 18.8 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
- 18.10.1 the Authority with full details and copies of the complaint, communication or request;
 - 18.10.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 18.10.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 18.10.4 assistance as requested by the Authority following any Data Loss Event;
 - 18.10.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 18.11 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause 18. This requirement does not apply where the Provider employs fewer than 250 staff, unless:
- 18.11.1 the Authority determines that the processing is not occasional;
 - 18.11.2 the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - 18.11.3 the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 18.12 The Provider shall allow for audits of its Personal Data processing activity by the Authority or the Authority's designated auditor.

- 18.13 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- 18.14 Before allowing any Sub-processor to process any Personal Data related to this Framework Agreement, the Provider must:
- 18.14.1 notify the Authority in writing of the intended Sub-processor and processing;
 - 18.14.2 obtain the written consent of the Authority;
 - 18.14.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 18 such that they apply to the Sub-processor; and
 - 18.14.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 18.15 The Provider shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 18.16 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause 18 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Framework Agreement).
- 18.17 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Officer.
- 18.18 This clause 18 shall apply during the Contract Period and indefinitely after its expiry.

19 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 19.1 The Provider shall not and shall procure that the Staff shall not wilfully and in breach of any obligation under this Framework Agreement, do anything which may damage the reputation of the Authority in any way or bring the Authority into disrepute. In particular, the Provider acknowledges the sensitivity of certain aspects of the Services and shall comply with the Authority (and a Customer's) instructions regarding any restrictions on communications in connection with Services provided under this Framework Agreement.
- 19.2 The Provider shall not and shall procure that the Staff shall not without the prior Approval of the Customer, which Approval shall not be unreasonably withheld or delayed:
- 19.2.1 publish or broadcast, including through interviews with the media, use of social media and other communications with third parties, any details of Services provided pursuant to this Framework Agreement;
 - 19.2.2 use the Authority's name or brand in any promotion or marketing, including on its own website, or announcement of orders, without the prior written consent of the Authority; or

- 19.2.3 make any press announcements or publicise this Framework Agreement or its contents in any way without the prior written consent of the Authority, which consent shall not be unreasonably withheld or delayed.
- 19.3 The Provider agrees and acknowledges that nothing in this Framework Agreement either expressly or by implication constitutes an endorsement of any products or services of the Provider and the Provider shall not (and shall procure that the Staff do not) conduct itself in such a way as to imply or express any such approval or endorsement.
- 19.4 The Provider agrees that monetary damages would not be a sufficient remedy for breach of clauses 19.1 to 19.3 and that the Authority shall be entitled, without prejudice to any other rights or remedies that may be available, to seek injunctive relief without proof of special damages, or any other equitable relief or remedy for any threatened or actual breach of such clauses.
- 19.5 The Provider shall at all times during the Framework Agreement on written demand indemnify the Authority and keep the Authority fully indemnified against all losses, incurred by, awarded against or agreed to be paid by the Provider arising out of any claim or infringement or alleged infringement resulting from the Provider's unauthorised use of the Authority's logo.

20 INTELLECTUAL PROPERTY RIGHTS

- 20.1 All Intellectual Property Rights in any Authority Materials shall, as between the Parties, belong to the Authority (or the Crown with respect to any copyright) and the Provider shall not, and shall ensure that the Staff shall not, use or disclose any Authority Materials without prior Approval save to the extent necessary for performance by the Provider of its obligations under the Framework Agreement or any Call-Off Contract.
- 20.2 The Provider shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform obligations under the Framework Agreement or any Call-Off Contract grants to the Authority and the Customers a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority and Customers an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same manner. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority and Customers to sub-license, transfer, novate or assign to other Contracting Authorities, a Replacement Provider or to any other third party supplying services to the Authority.
- 20.3 The Provider shall not infringe any Intellectual Property Rights of any third party in performing its obligations under this Framework Agreement or a Call-Off Contract and the Provider shall, during and after the term of the Framework Agreement, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against any and all losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of a Third Party IP Claim or in connection with any breach of this clause 20.3, except to the extent that any such claim results directly from:

- 20.3.1 items or materials based upon designs supplied by the Authority; or
- 20.3.2 the use of data supplied by the Authority which is not required to be verified by the Provider under any provision of the Framework Agreement or any Call-Off Contract.
- 20.4 The Authority shall notify the Provider in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Provider to the Authority.
- 20.5 The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any Third Party IP Claim, provided that the Provider shall at all times:
 - 20.5.1 consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
 - 20.5.2 take due and proper account of the interests of the Authority; and
 - 20.5.3 not settle or compromise any claim without prior Approval (not to be unreasonably withheld or delayed).
- 20.6 The Authority shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Provider shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Provider shall not be required to indemnify the Authority under this clause 20.6 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clause 20.3.1 or 20.3.2.
- 20.7 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.
- 20.8 If any Third Party IP Claim is made or in the reasonable opinion of the Provider is likely to be made, the Provider shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clause 20.2 use its best endeavours to:
 - 20.8.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or
 - 20.8.2 procure a licence to use the Intellectual Property Right(s) and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority, and, as appropriate, a Customer under a Call-Off Contract affected by the alleged infringement,and in the event that the Provider is unable to comply with clauses 20.8.1 or 20.8.2 within twenty (20) Working Days of receipt by the Authority of the Provider's notification the Authority may terminate the Framework Agreement with immediate effect by notice in writing.

- 20.9 The Provider grants to the Authority a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Provider owned or developed prior to the Framework Commencement Date and which the Authority reasonably requires in order to exercise its rights under the Framework Agreement.

21 RECORD KEEPING AND AUDIT

- 21.1 In addition to any specific record-keeping obligations under a Call-Off Contract or set out in the Specification, the Provider shall keep and maintain until six (6) years after the end of the term of the Framework Agreement, or such other period as may be agreed between the parties, full and accurate records of its Call-Off Contracts including the Services supplied under it, all expenditure reimbursed by the Authority and any Customer, and all payments made by the Authority and any Customer. The Provider shall on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Framework Agreement and any Call-Off Contracts.
- 21.2 The Provider agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Provider in relation to the Services.
- 21.3 The Provider shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Provider's records and documents relating to the Services and to provide such copies and oral or written explanations as may reasonably be required.
- 21.4 The Provider (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Provider shall provide such explanations as are reasonably required for these purposes.

22 TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

- 22.1 The Authority may terminate the Framework Agreement with immediate effect by notice in writing and without compensation to the Provider where the Provider is a company and in respect of the Provider:
- 22.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - 22.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

- 22.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) calendar days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
 - 22.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - 22.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - 22.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
 - 22.1.7 being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 22.1.8 any event similar to those listed in 22.1.1 to 22.1.7 occurs under the law of any other jurisdiction.
- 22.2 The Authority may terminate the Framework Agreement with immediate effect by notice in writing and without compensation to the Provider where the Provider is an individual and:
- 22.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider's creditors; or
 - 22.2.2 a petition is presented and not dismissed within fourteen (14) calendar days or order made for the Provider's bankruptcy; or
 - 22.2.3 a receiver, or similar officer is appointed over the whole or any part of the Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
 - 22.2.4 the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
 - 22.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within fourteen (14) calendar days; or
 - 22.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
 - 22.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
 - 22.2.8 any event similar to those listed in 22.2.1 to 22.2.7 occurs under the law of any other jurisdiction.

- 22.3 The Provider shall notify the Authority immediately in writing of any proposal or negotiations which will or may result in a Change of Control. The Authority may terminate the Framework Agreement with immediate effect by notice in writing and without compensation to the Provider within six (6) Months of:
- 22.3.1 being notified that a Change of Control has occurred; or
 - 22.3.2 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 the Approval of the Authority was granted prior to the Change of Control.
- 22.4 The Authority may terminate the Framework Agreement with immediate effect by notice in writing and without compensation to the Provider where the Provider is a partnership and:
- 22.4.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - 22.4.2 it is for any reason dissolved; or
 - 22.4.3 a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
 - 22.4.4 a receiver, or similar officer is appointed over the whole or any part of its assets; or
 - 22.4.5 the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
 - 22.4.6 any of the following occurs in relation to any of its partners:
 - 22.4.6.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors; or
 - 22.4.6.2 a petition is presented for his bankruptcy; or
 - 22.4.6.3 a receiver, or similar officer is appointed over the whole or any part of his assets; or
 - 22.4.7 any event similar to those listed in clauses 22.4.1 to 22.4.6 occurs under the law of any other jurisdiction.
- 22.5 The Authority may terminate the Framework Agreement with immediate effect by notice in writing and without compensation to the Provider where the Provider is a limited liability partnership and:

- 22.5.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - 22.5.2 it is for any reason dissolved; or
 - 22.5.3 an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986; or
 - 22.5.4 any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986; or
 - 22.5.5 a petition is presented for its winding up (which is not dismissed within 14 calendar days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986; or
 - 22.5.6 a receiver, or similar officer is appointed over the whole or any part of its assets; or
 - 22.5.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - 22.5.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 22.5.9 any event similar to those listed in clauses 22.5.1 to 22.5.8 occurs under the law of any other jurisdiction.
- 22.6 References to the Insolvency Act 1986 in clause 22.5 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

23 LIABILITY, INDEMNITY AND INSURANCE

- 23.1 Neither Party excludes or limits liability to the other Party for:
- 23.1.1 death or personal injury caused by its negligence; or
 - 23.1.2 fraud or fraudulent misrepresentation;
 - 23.1.3 any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982;
 - 23.1.4 any breach of clauses 10, 16 and 18; or
 - 23.1.5 any liability to the extent it cannot be limited or excluded by Law.
- 23.2 Subject to clauses 23.3 and 23.4, the Provider shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under this Framework Agreement or the presence of the Provider or any Staff or Sub-Contractors 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 Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider, its Staff and Sub-Contractors.

- 23.3 Subject to clause 23.1 the aggregate liability of either party in respect of the Framework Agreement shall not exceed £1 million. The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Framework Agreement.
- 23.4 The Authority may recover from the Provider the following losses incurred by the Authority to the extent they arise as a result of a Default by the Provider:
- 23.4.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - 23.4.2 any wasted expenditure or charges;
 - 23.4.3 the additional costs of procuring a Replacement Provider for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Provider and/or replacement deliverables above those which would have been payable under the Framework Agreement;
 - 23.4.4 any compensation or interest paid to a third party by the Authority; and
 - 23.4.5 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.
- 23.5 Subject always to clause 23.1 and 23.5, in no event shall either Party be liable to the other for any:
- 23.5.1 loss of profit, turnover, business opportunity, revenue or damage to goodwill (in each case whether direct or indirect); or
 - 23.5.2 loss of savings (whether anticipated or otherwise); and/or
 - 23.5.3 indirect, special or consequential loss or damage.
- 23.6 Unless otherwise specified by the Authority, the Provider shall, with effect from the Commencement Date for such period as necessary to enable the Provider to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 years following the end of the Contract.
- 23.7 The Provider shall hold employer's liability insurance in respect of Staff and such insurance shall be in accordance with any legal requirement from time to time in force.

- 23.8 The Provider shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 23.9 If the Provider does not give effect to and maintain the insurances required by the provisions of the Framework Agreement the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 23.10 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Framework Agreement.
- 23.11 The Provider shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Provider, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Provider is an insured, a co-insured or additional insured person.

24 TERMINATION ON DEFAULT

- 24.1 The Authority may terminate the Framework Agreement by written notice to the Provider with immediate effect if:
- 24.1.1 the Provider commits a Default which is a material breach of the Framework Agreement and:
- 24.1.1.1 the Provider has not remedied the Default to the satisfaction of the Authority within twenty-five (25) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- 24.1.1.2 the Default is a material breach and is not, in the opinion of the Authority, capable of remedy;
- 24.1.2 the Provider commits a Default (other than a material breach) and has not remedied the Default to the satisfaction of the Authority within thirty-five (35) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- 24.1.3 the Provider repeatedly breaches any of the terms of this Framework Agreement and/or of Call-Off Contracts 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 Framework Agreement and/or any Call-Off Contract placed under it;
- 24.1.4 there is a material detrimental change in the financial standing and/or credit rating of the Provider which adversely impacts on the Provider's ability to supply Services under the Framework Agreement; or

24.1.5 a Call-Off Contract has been terminated for Default under clause H2 of a Call-Off Contract.

24.2 For the purposes of clause 24.1 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:

24.2.1 a substantial portion of the Framework Agreement or Call-Off Contract; or

24.2.2 any of the obligations set out in clauses 10, 14, 15, 16, 18 or 20.

25 TERMINATION UNDER THE PUBLIC CONTRACTS REGULATIONS

25.1 The Authority may terminate the Framework Agreement on written notice with immediate effect to the Provider if:

25.1.1 the Framework Agreement has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Public Contracts Regulations;

25.1.2 the Provider was, at the time the Framework Agreement was awarded, in one of the situations specified in regulation 57(1) of the Public Contracts Regulations, including as a result of the application of regulation 57(2) thereof, and should therefore have been excluded from the procurement procedure which resulted in its award of the Framework Agreement; or

25.1.3 the Framework Agreement should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaty on European Union, Treaty of the Functioning of the European Union or the Public Contracts Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty of the Functioning of the European Union.

26 TERMINATION BY THE AUTHORITY

26.1 In addition to any other rights to terminate under this Framework Agreement the Authority has the right to terminate this Framework Agreement at any time without cause by giving three (3) months written notice to the Provider.

27 SUSPENSION

27.1 Where pursuant to clause 24 the Authority has notified the Provider of a Default and requested for it to be remedied, the Authority may suspend the Provider’s appointment to supply Services to Contracting Authorities in any or all of the Provider’s Lots by giving notice in writing to the Provider, such suspension to last until the Provider has remedied the Default to the satisfaction of the Authority.

27.2 Without prejudice to the right of the Authority to terminate the Framework Agreement pursuant to clause 24, where such a right of termination has arisen, the Authority may instead suspend the Provider’s appointment to supply Services to Contracting Authorities in any or all of the Provider’s Lots by giving notice in writing to the Provider.

- 27.3 A notice given to a Provider pursuant to clause 27.2 must specify the period of suspension.

28 CONSEQUENCES OF TERMINATION

- 28.1 Call-Off Contracts do not expire automatically on the termination or expiry of this Framework Agreement and will continue in force unless and until they are terminated or expire in accordance with the Call-Off Contract.
- 28.2 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 prior to termination or expiry.
- 28.3 Termination or expiry of the Framework Agreement shall not affect the continuing rights, remedies or obligations of the Authority or the Provider under clauses 7, 10, 12.2, 14, 16, 17, 18, 20, 21, 23, 28, 29, 30, 31, 38, 42 or any other obligations which are either expressed to or by implication, are intended to survive termination or expiry.

29 RECOVERY UPON TERMINATION

- 29.1 On the termination of the Framework Agreement for any reason, the Provider shall at its cost:
- 29.1.1 immediately return to the Authority or destroy, upon the Authority's written instruction, all Confidential Information, Personal Data and Authority Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of this Framework Agreement and/or providing the Services;
 - 29.1.2 immediately deliver to the Authority all Authority Property (including materials, documents, information and access keys) provided to the Provider. Such Property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - 29.1.3 assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to a Replacement Provider and/or the completion of any work in progress; and
 - 29.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or a Replacement Provider to conduct due diligence.
- 29.2 If the Provider fails to comply with this clause 29, the Authority may recover possession thereof and the Provider grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted suppliers or Sub-Contractors where any such items may be held.

30 RETENDERING AND HANDOVER

- 30.1 Within twenty-one (21) Working Days of being so requested by the Authority, the Provider shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.
- 30.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause 30.1 is given only to potential Providers who have qualified to tender for the future provision of the Services.
- 30.3 The Authority shall require that all potential Providers treat the information referred to in clause 30.1 in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority, and that they shall not use it for any other purpose.
- 30.4 The Provider shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Provider is required to provide under clause 30.1.
- 30.5 The Provider shall co-operate fully with the Authority during the handover arising from the completion or earlier termination of the Framework Agreement. This co-operation, during the period of the new Provider setting up operations, shall extend to allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- 30.6 Within ten (10) Working Days of being so requested by the Authority, the Provider shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

31 EXIT MANAGEMENT

- 31.1 Upon termination the Provider shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Provider of the provision of Services.
- 31.2 Where the Authority requires continued provision of all or any of the Services on expiry or termination of this Framework Agreement, either by performing them itself or by engaging a third party to perform them, the Provider shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the provision of Services without disruption to routine operational requirements.

32 KNOWLEDGE RETENTION

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

33 COLLABORATION

- 33.1 In providing Services pursuant to this Framework Agreement and the Call-Off Contracts, the Provider shall co-operate with all other organisations present on the Premises in accordance with security requirements in clause E3 of the Call-Off Contract and in accordance with all instructions given to the Provider by the Authority or Customer's representative in charge of the Premises.

34 STATUS OF THE PARTIES

- 34.1 Except as expressly provided in this Framework Agreement, nothing in this Framework Agreement, nor any actions taken by the Authority and the Provider pursuant to this Framework Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the parties, or authorise either party to make representations or enter into any commitments for or on behalf of any other party.
- 34.2 The Provider shall not (and shall ensure that any other person engaged in relation to the provision of Services under this Framework Agreement shall not) say or do anything that might lead any other person to believe that the Provider is acting as the agent or employee of the Authority or a Customer.
- 34.3 Where the Provider is an individual:
- 34.3.1 the Provider warrants and represents that he is providing Services as an independent contractor and nothing shall render him an employee, worker, agent or partner of the Authority or a Customer and the Provider shall not hold himself out as such; and
 - 34.3.2 the Provider agrees that this Framework Agreement and any Call-Off Contract together constitute contracts for the provision of services and not a contract of employment and accordingly, the Provider shall be fully responsible for and shall indemnify the Authority for and in respect of any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by Law. The Provider shall further indemnify the Authority against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Authority in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the Authority's negligence or wilful default.

35 TRANSFER AND SUB-CONTRACTING

- 35.1 The Framework Agreement is personal to the Provider and the Provider shall not
- 35.1.1 assign, novate or otherwise dispose of the Framework Agreement in whole or in part without the prior Approval of the Authority;
 - 35.1.2 sub-contract any of its rights or obligations under the Framework Agreement without the prior Approval of the Authority.
- 35.2 The Authority is entitled to:
- 35.2.1 assign, novate or otherwise dispose of its right and obligations under the Framework Agreement or any part thereof to any Contracting Body; or
 - 35.2.2 novate the Framework Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority
- provided that such assignment, novation or disposal does not unreasonably increase the burden of the Provider's obligations under the Framework Agreement.
- 35.3 Where the Authority has consented to the placing of Sub-Contracts, the Provider shall notify the Authority the name(s), contact details and legal representatives of the Sub-Contractor(s) and copies of each Sub-Contract shall, at the request of the Authority, be sent by the Provider to the Authority promptly on request.
- 35.4 If the Authority believes there are:
- 35.4.1 compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Public Contracts Regulations, the Provider shall replace or not appoint the Sub-Contractor; or
 - 35.4.2 non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Public Contracts Regulations, the Authority may require the Provider to replace or not appoint the Sub-Contractor and the Provider shall promptly comply with such requirement.

36 VARIATIONS TO THE FRAMEWORK AGREEMENT

- 36.1 Subject to the provisions of this clause 36, the Authority may request a Variation to this Framework Agreement provided that such Variation does not amount to a material change of this Framework Agreement within the meaning of the Public Contracts Regulations and the law.
- 36.2 The Authority may, at its own instance, or where in its sole and absolute discretion it decides to having been requested to do so by the Provider, request a Variation by completing and sending the Change Control Notice as set out in Schedule 9 to the Provider, giving sufficient information for the Provider to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 36.3 In the event that the Provider is unable to agree to or provide the Variation, the Authority may:

36.3.1 agree to continue to perform its obligations under this Framework Agreement without the Variation; or

36.3.2 terminate this Framework Agreement with immediate effect.

36.4 The Variations shall cover:

36.4.1 operational changes, which may require a variation to the way in which Services are provided, but do not require a Variation to this Framework Agreement;

36.4.2 agreement changes, which may require a Variation to the Framework Agreement.

37 RIGHTS OF THIRD PARTIES

37.1 Subject to clause 37.2, a person who is not a party to the Framework Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both parties to this Framework Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

37.2 Each Contracting Body may, with the Authority's prior written consent, enforce any provisions of this Framework Agreement which is for the benefit of the Contracting Body as a third party beneficiary in accordance with the Contracts (Rights of Third Parties) Act 1999.

37.3 Amendments to this Framework Agreement may be made by the parties without the consent of any Contracting Body.

38 ENTIRE AGREEMENT

38.1 This Framework Agreement constitutes the entire agreement and understanding between the parties to this Framework Agreement in respect of the matters dealt with in this Framework Agreement. This Framework Agreement supersedes all prior negotiations between the Authority and the Provider and all representations and undertakings made by one party to the other, whether written or oral, except that this clause does not exclude liability in respect of any fraud or fraudulent misrepresentation.

39 DISPUTE RESOLUTION

39.1 The Provider and the Authority shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Framework Agreement within twenty (20) Working Days of either party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent senior employee) of the Provider and the Authority's commercial director.

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

- 39.3 If the dispute cannot be resolved by the Provider and the Authority pursuant to clause 39.1 either party may refer it to mediation pursuant to the procedure set out in clause 39.5.
- 39.4 The obligations of the parties under the Framework Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Provider and the Staff shall comply fully with the requirements of the Framework Agreement at all times.
- 39.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 39.5.1 A neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one party to the other or if the Mediator agreed upon is unable or unwilling to act, either party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.
 - 39.5.2 The parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If considered appropriate, the parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
 - 39.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
 - 39.5.4 If the parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the parties once it is signed by their duly authorised representatives.
 - 39.5.5 Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Framework Agreement without the prior written consent of both parties.
 - 39.5.6 If the parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 39.6.
- 39.6 Subject to clause 39.2, the parties to this Framework Agreement shall not institute court proceedings until the procedures set out in clauses 39.1 and 39.3 have been completed save that:

- 39.6.1 the Authority may at any time before court proceedings are commenced, serve a notice on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause 39.7.
 - 39.6.2 If the Provider intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have twenty-one (21) days following receipt of such notice to serve a reply on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause 39.7.
 - 39.6.3 The Provider may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 39.7, to which the Authority may consent as it sees fit.
- 39.7 In the event that any arbitration proceedings are commenced pursuant to clause 39.6:
- 39.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;
 - 39.7.2 the Authority shall give a written notice of arbitration to the Provider (the **"Arbitration Notice"**) stating:
 - 39.7.2.1 that the dispute is referred to arbitration; and
 - 39.7.2.2 providing details of the issues to be resolved;
 - 39.7.3 the London Court of International Arbitration ("**LCIA**") procedural rules in force at the date that the dispute was referred to arbitration in accordance with 39.7.2 shall be applied and are deemed to be incorporated by reference to the Framework Agreement and the decision of the arbitrator shall be binding on the parties in the absence of any material failure to comply with such rules;
 - 39.7.4 the tribunal shall consist of a sole arbitrator to be agreed by the parties;
 - 39.7.5 if the parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Authority under clause 39.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
 - 39.7.6 the arbitration proceedings shall take place in London and in the English language; and
 - 39.7.7 the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

40 NOTICES

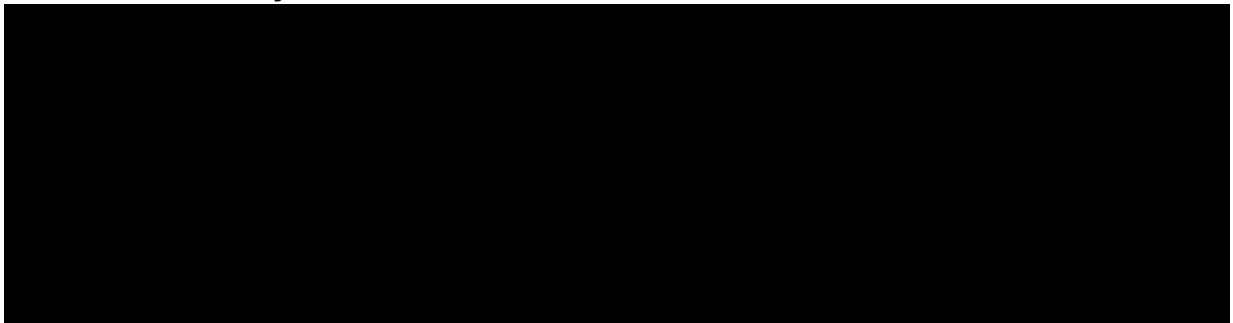
- 40.1 Subject to clause 40.3, where the Framework Agreement states that a notice or communication between the Parties must be "written" or "in writing" it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Bravo.
- 40.2 If it is not returned as undelivered a notice served:
 - 40.2.1 in a letter is deemed to have been received 2 Working Days after the day it was sent; and

40.2.2 in an email or via Bravo is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day
or when the other Party acknowledges receipt, whichever is the earlier.

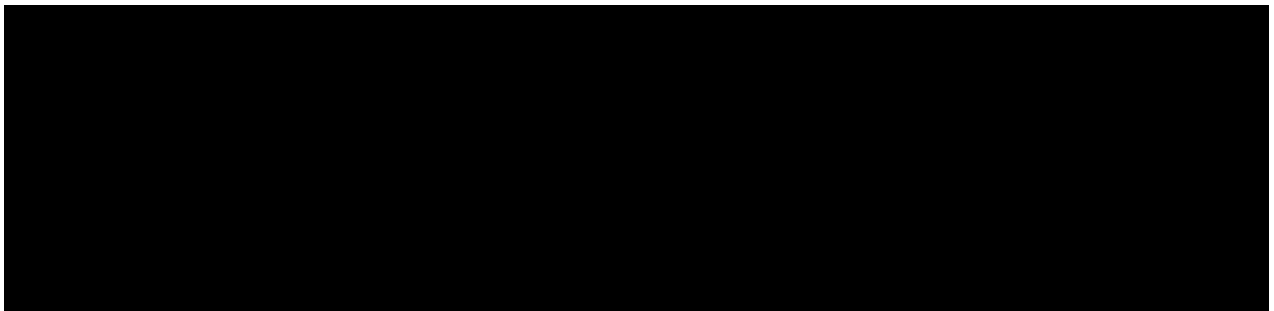
40.3 Notices pursuant to clause 39 (Dispute Resolution) or to terminate the Framework Agreement are valid only if served in a letter by hand, recorded delivery or special delivery.

40.4 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under the Framework Agreement:

For the Authority:



For the Provider:



41 KEY PERSONNEL

41.1 On the Framework Commencement Date, the Provider shall provide the Authority with the contact details of its nominated representative who is to receive an order for Services (together with details of an alternative in case that representative is unavailable) and details of Key Personnel identified as part of its Tender. It is the responsibility of the Provider to ensure that the Authority is notified of any changes to its nominated representative.

41.2 The Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority and other Contracting Authorities.

41.3 The Key Personnel shall not be released from supplying the Services without Approval of the Authority, except by reason of long-term sickness, maternity leave, paternity

leave or termination of employment and other extenuating circumstances or to comply with the request of a Customer under clause B6.5 of the Call-Off Terms and Conditions.

- 41.4 Any replacements to the Key Personnel shall be subject to the Approval of the Authority and any Customer where provision of Services under a Call-Off Contract will be affected by such replacements. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 41.5 The Authority shall not unreasonably withhold its Approval under clauses 41.3 or 41.4. Such Approval shall be conditional on appropriate arrangements being made by the Provider to minimise any adverse impact on any Call-Off Contract which could be caused by a change in Key Personnel.
- 41.6 The Authority may, by written notice to the Provider, ask the Provider to remove any Key Personnel whose continued presence would, in the reasonable opinion of the Authority, be undesirable. The Provider shall promptly comply with any such request.

42 GOVERNING LAW

- 42.1 The Framework Agreement shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Authority to take proceedings against the Provider in any other court of competent jurisdiction, nor shall the taking of proceedings in any other court of competent jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

FRAMEWORK AGREEMENT SCHEDULE 1

DEFINITIONS

1. In this Framework Agreement and the Call-Off Contract, unless the context requires otherwise, the following words and phrases shall have the following meanings:

“ABP”	means Animal By-Products, which include entire animal bodies, parts of animals, products of animal origin or other products obtained from animals that are not fit or intended for human consumption.
“Affected Party”	means the Party seeking to claim relief in respect of a Force Majeure Event.
“Affiliate”	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.
“AP”	means ‘affected premises’ which are subject to a notice of the Secretary of State/Scottish Ministers/Welsh Ministers declaring it to be either infected with a disease (Infected Premises) or where there is a strong suspicion that an Exotic Notifiable Disease may be present. Entry and exit restrictions are likely to apply.
“APHA”	means the Animal and Plant Health Agency, an Executive Agency of the Authority.
“Approval”	means the written consent of the Authority or any Customer (as the context requires).
“Authority”	means the Secretary of State for Environment, Food and Rural Affairs.
“Authority Materials”	means all guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs, images, videos or other material which is furnished to or made available to the Provider by or on behalf of the Authority and/or any Personal Data for which the Authority is Data Controller.
“Authority’s Authorised Representative”	means an authorised representative nominated by the Authority or Contracting Body or APHA.
“Authority Software”	means software which is owned by or licensed to the Authority or any Customer, including software which is or will be used by the Provider for the purposes of providing the Services but excluding the Provider Software.

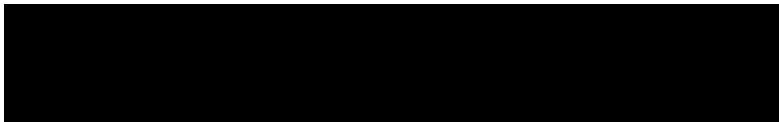
“Authority System”	means the Authority or Customers’ computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority, any Customer or the Provider in connection with the Framework Agreement or any Call-Off Contract which is owned by or licensed to the Authority or any Customer by a third party and which interfaces with the Provider System or which is necessary for any Customer to receive the Services.
“Selection Methodology”	means the selection methodology set out in Schedule 4 to this Framework Agreement, to be applied for the award of Call-Off Contracts.
“Base Location”	means (in relation to the Mileage Rate charged) the location where the unloaded mileage will start to apply and where it will end.
“Bovine”	means farmed livestock of the genus Bos, including buffalo, Bubalus and Bison, identified by the Authority as requiring to be killed.
“Bravo”	means has the meaning given in paragraph 3 of the Form of Agreement.
“Call-Off Contract”	means the agreement between a Customer and the Provider consisting of the Order Form (or for Lot 2 Services where an Order is placed verbally, the verbal order confirmation), the Call-Off Terms and Conditions, together with any schedules annexes and appendices referred to therein. In the event of any conflict between any of these documents, they shall be given precedence in the order listed.
“Call-Off Terms and Conditions”	means the standard terms and conditions of the Call-Off Contract as set out in Schedule 5.
“Carcase(s)”	means deceased animal(s) identified by the Customer as being suitable for removal and PME if required.
“Change of Control”	Means a merger, take-over, change of control, change of name or status including where the Provider undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010.
“Change Control Notice”/“CCN”	means the Change Control Notice set out in Schedule 9 containing details of agreed Variations to the Framework Agreement or a Call-Off Contract.
“Commencement Date”	means the date set out in the Order Form upon which the Call-Off Contract commences.
“Commercially Sensitive Information”	means the information included at Schedule 11 to the Framework Agreement and/or listed in or accompanying or attached to the Order Form comprised of information: (a) which is provided by the Provider to the Customer in confidence for the period set out in the Order Form; or

	(b) any information that would be regarded as commercially sensitive by a reasonable business person relating to: (i) the business, affairs, plans of the Provider; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the Provider.
“Completion Date”	means the date of expiry of the Call-Off Contract set out in the Order Form.
“Confidential Information”	means any information which has been designated as confidential by the disclosing party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of the disclosing party and all Personal Data. Confidential Information shall not include information which: (a) was public knowledge at the time of disclosure (otherwise than by breach of the Framework Agreement or a Call-Off Contract); (b) was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party; (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or (d) is independently developed without access to the Confidential Information.
“Contracting Body”	means the Authority and any other contracting bodies described in the OJEU Notice entitled to order Services under this Framework Agreement.
“Contract Manager”	means the official of a Customer, or other person employed in that capacity, appointed by the Customer to act on its behalf for the purpose of managing its Call-Off Contract as identified in the Order Form and/or as notified in writing to the Provider.
“Contract Period”	means in any Call-Off Contract the period from the Commencement Date to: (a) the date of expiry set out in clause A4 (Contract Period), or (b) following an extension pursuant to clause F8 (Extension of Contract Period), the date of expiry of the extended period, or (c) such earlier date of termination or partial termination of the Call-Off Contract in accordance with the Law or the provisions of the Call-Off Contract.

“Contract Price”	means the price (exclusive of any applicable VAT), payable to the Provider by the Customer under any Call-Off Contract, as set out in the Order Form, for the full and proper performance by the Provider of its obligations under the Call-Off Contract.
“Contract Year”	means a consecutive period of twelve (12) months commencing on the Framework Commencement Date or each anniversary thereof.
“Control”	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly.
“Controller”	has the meaning given in the GDPR.
“Crown”	means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, non-departmental public bodies, government offices and government agencies and “Crown Body” is an emanation of the foregoing.
“Customer”	means a Contracting Body calling off Services under the Framework Agreement as identified in an Order Form.
“Customer Data”	Means any or all (a) data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Provider by or on behalf of the Customer; or (ii) which the Provider is required to generate, process, store or transmit pursuant to the Call-Off Contract (including any photographs or other images taken by the Provider’s Staff on the Premises); or (b) any Personal Data for which the Customer is the Controller.
“Customer Equipment”	means any equipment, consumables, plant, materials and other such items supplied by the Customer for use by the Provider in the performance of its obligations under any Call-Off Contract.
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Provider under the Framework Agreement or Call-Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the Framework Agreement or Call-Off Contract, including any Personal Data Breach.

“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
“Data Protection Legislation”	means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy.
“Data Protection Officer”	has the meaning given in the GDPR.
“Data Subject”	has the meaning given in the GDPR.
“Data Subject Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
“Default”	means any breach of the obligations of the relevant party (including 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 Framework Agreement or Call-Off Contract and in respect of which such party is liable to the other.
“DOTAS”	means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to NICs by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.
“DPA 2018”	means the Data Protection Act 2018.
“Environmental Information Regulations”	means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
“Exceptional Circumstances”	means an event deemed solely by the Customer as not falling within the definition of Force Majeure but prevents normal operation of the business. (For example, failure of the first method of kill or utility failures, and others at the sole discretion of the Customer).
“Exotic Notifiable Disease”	means a disease which is not present in the UK that is named in section 88 of the Animal Health Act 1981 or an order made under the Animal Health Act.

“Extended PME”	means that the Carcase(s) must not be touched before the APHA vet has authorised preparation to begin. In these circumstances the Carcase(s) may be used as evidence in legal proceedings and the APHA vet must witness and record all interventions with the Carcase(s).
“FAC”	means Firearms Certificate.
“FFP3”	means the filtering facepiece (FFP) protection class required.
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
“Force Majeure Event”	means any event outside the reasonable control of either Party affecting its performance of its obligations under a Call-Off Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Provider, its Staff or Sub-Contractors, or any other failure in the Provider’s supply chain.
“Framework Agreement”	means this framework agreement for the provision of the Services between the Authority and Provider, together with any schedules, annexes and appendices appended to the foregoing.
“Framework Commencement Date”	means the date of commencement of the Framework Agreement as set out in clause 2.1 of Section 2 of the Framework Agreement.
“Framework Term”	means the term of this Framework Agreement as set out in clause 2
“Fraud”	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Call-Off Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.
“GDPR”	means the General Data Protection Regulation (Regulation (EU) 2016/679).
“Geographical Regions / Region”	means the Geographical Regions as specified in Table 1 within the Specification of Requirements.

“Good Industry Practice”	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
“HMG Security Policy Framework”	means the Cabinet Office Security Policy Framework as updated from time to time, a copy of which may be found at: https://www.gov.uk/government/publications/security-policy-framework
“ICT Environment”	means the Authority System and the Provider System.
“Incident”	means an occasion, which may or may not include an occurrence of Exotic Notifiable Disease, where the Services may be required at short notice (within six (6) to twelve (12) hours).
“Information”	has the meaning given under section 84 of the FOIA.
“Intellectual Property Rights”	means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, Know-How, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
“Invitation to Tender or ITT”	means the Invitation to Tender for a Framework with Tender Reference 23866 issued on 30/11/18 and all related documents published by the Authority and made available to the Provider and other tenderers.
“IP Materials”	has the meaning given to it in clause E7.1 (Intellectual Property Rights) of the Call-Off Contract.
“Keeper”	means any person who owns or is responsible for farmed livestock animals whether on a permanent or temporary basis, but it does not include a person responsible for an animal solely because they are transporting it.
“Key Personnel”	means the following individuals: For the Provider:  For the Customer: 

“Kill Rate”	means the price for all costs associated with the culling of animals, including provision of all facilities, disposal of waste and all associated administrative costs.
“Know-How”	means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods).
“Law”	means <u>any</u> law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the relevant Party is bound to comply.
“LED”	means the Law Enforcement Directive (Directive (EU) 2016/680).
“Licence”	means the licence or certificate you need to slaughter or kill animals. Examples include Welfare of Animals (Slaughter or Killing) (WATOK) licence or Firearms Certificate.
“Lot” or “Lots”	means the lot(s) in respect of which Services may be ordered from the Provider and which are described in Schedule 2 to this Framework Agreement.
“Malicious Software”	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.
“Mileage Rate”	means the loaded or unloaded rate chargeable by the Provider for the cost of transport, including but not limited to the costs of the driver, driver’s mate, all fuels, tolls, ferries and vehicle servicing costs as appropriate.
“Mini-competition”	means the award of a Call Off Contract by re-opening competition between the Providers appointed to the Framework Agreement and which are capable of performing the proposed Call-Off Contract.
“Month”	means calendar month.
“Notified Premises”	means the premises where the animals or Carcase(s) are located.

“Occasion of Tax Non-Compliance”	means: (a) any tax return of the Provider submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: i) a Relevant Tax Authority successfully challenging the Provider under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; ii) the failure of an avoidance scheme which the Provider was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or (b) any tax return of the Provider submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Framework Commencement Date or, with respect to a Call-Off Contract, the Commencement Date, or to a civil penalty for fraud or evasion.
“OJEU Notice”	means the contract notice 2018/S 234-534974 published in the Official Journal of the European Union.
“Order” or “Order Form”	means the document a Customer will send to the Provider setting out the details of the Services it requires from the Provider in the form set out in Schedule 6 to this Framework Agreement or, where an order may be placed verbally in accordance with the Schedule 4 Call-Off Procedure, the verbal order placed by the Provider in accordance with such Call-Off Procedure.
“Outbreak”	means an occurrence of Exotic Notifiable Disease at one or more premises.
“Out Codes”	means the first part of a UK postcode.
“Partner PME Provider”	means the partner providing PME’s on behalf of the Authority.
“Party”	means (a) if the term is used within Section 2 Standard Terms and Conditions of Framework Agreement, any party to the Framework Agreement and (b) if the term is used within a Call-Off Contract, any party to a Call-Off Contract.
“Personal Data”	has the meaning given in the GDPR.
“Personal Data Breach”	has the meaning given in the GDPR.

“PME”	means Post Mortem Examination
“PME Provider”	means APHA or a Partner PME Provider, whomever is assigned to perform the PME.
“PME Provider site”	means either an APHA PME site or Partner PME Provider site.
“Personal Protective Equipment” or “PPE”	means protective clothing, helmets, goggles, or other garments or equipment designed to protect the wearer's body from injury or infection.
“Premises”	means the location where the Services are to be performed, as such location is identified in the Order Form. The Premises will generally be the AP as described in the Specification, unless specified otherwise by the Customer.
“Pricing Matrix”	means the pricing matrices set out in Schedule 3 to this Framework Agreement.
“Processor”	has the meaning given in the GDPR.
“Prohibited Act”	means any of the following which constitute prohibited acts: (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority or Contracting Body a financial or other 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 the Framework Agreement or any other contract with a Contracting Body; or (iv) defrauding, attempting to defraud or conspiring to defraud a Contracting Body.

“Property”	means the property, other than real property, issued or made available to the Provider by the Authority or Customer in connection with the Framework Agreement or any Call-Off Contract.
“Protective Measures”	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
“Provider”	means the party appointed as a potential provider of Services as identified in section 1 to this Framework Agreement.
“Provider Equipment”	means the Provider’s equipment, consumables, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under any Call-Off Contract.
“Provider’s Representative”	means any competent person appointed by the Provider to be his representative in relation to the performance of any Call-Off Contract who will receive and act on any directions given by the Contract Manager.
“Provider Software”	means software which is proprietary to the Provider, including software which is or will be used by the Provider for the purposes of providing the Services and which is specified as such in the Order Form.
“Provider System”	means the information and communications technology system used by the Provider in providing the Services including the Provider Software, the Provider Equipment and related cabling (but excluding the Authority System).
“Public Contracts Regulations”	means the Public Contracts Regulations 2015 (SI 2015/102)
“Quality Standards”	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Order Form.
“Quarantine Fee”	means the fee payable by a Customer (as identified in an Order Form) where Staff are unable to work following completion of the provision of Services as a result of quarantine conditions imposed at the Premises.

“Receipt”	means the physical or electronic arrival of the invoice at the address of the Customer detailed at clause A5.4 (Notices) of the Call-Off Contract or at any other address given by the Customer to the Provider for the submission of invoices.
“Relevant Tax Authority”	means HM Revenue & Customs or, if applicable, a tax authority in the jurisdiction in which the Provider is established.
“Regulatory Bodies”	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Call-Off Contract or any other affairs of the Authority and “Regulatory Body” shall be construed accordingly.
“Relevant Conviction”	means a conviction that is relevant to the nature of the Services or as listed by the Customer and/or relevant to the work of the Customer.
“Relevant Requirements”	means all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.
“Replacement Provider”	means any third party service provider appointed by the Authority or a Customer to supply any Services which are substantially similar to any of the Services and which the Contracting Body receives in substitution for any of the Services following the expiry, termination or partial termination of a Call-Off Contract.
“Request for Information”	means a request for information under the FOIA or the Environmental Information Regulations.
“Response”	means the information submitted in response to the Framework ITT via the online response forms on Bravo including the Provider’s formal Tender.
“RPE”	means Respiratory Protective Equipment.
“Selection Methodology”	means the selection methodology set out in Schedule 4 to this Framework Agreement, to be applied for the award of Call-Off Contracts.
“Services”	means, in relation to the Framework Agreement, the services described in the Specification, and in relation to a Call-Off Contract, means those services within the scope of services set out in the Specification which are set out in an Order Form and which the Provider is required to carry out under a Call-Off Contract for a Contracting Body/Customer.

“Specification” or “Specification of Requirements”	means the specification (including any related performance measurements, requirements, protocols and targets) of the Services for the Provider’s Lot as set out in Schedule 2.
“Staff”	means all persons employed by the Provider to perform its obligations under the Framework Agreement and/or a Call-Off Contract together with the Provider’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Framework Agreement/ a Call-Off Contract.
“Standard PME”	means where the Provider will prepare the Carcase(s) for the inspecting Contracting Body vet to undertake the examination and harvesting of sample material. The Provider will be required to remove the head, pluck, viscera and udder as appropriate.
“Sub–Contractor”	means a third party directly or indirectly contracted to the Provider (irrespective of whether such person is an agent or Affiliate of the Provider) whose services and/or goods are used by the Provider (either directly or indirectly) in connection with the provision of the Services, and “Sub-Contract” shall be construed accordingly.
“Sub-processor”	means any third party appointed to process Personal Data on behalf of the Provider related to the Framework Agreement or a Call-Off Contract.
“Surveillance of animal health in farm animal programme”	means the overarching programme of work APHA and partner PME providers undertake to monitor and report on surveillance of animal health in Farm Animals.
“TB”	means Tuberculosis.
“Tender”	means documents and information submitted by the Provider to the Authority in response to the Authority’s Invitation to Tender. References to the Tender shall also include all responses given by the Provider in response to the selection questions as part of the assessment of the Provider’s suitability at Stage 2 of the ITT.
“Third Party IP Claim”	any claim, demand suit or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority or the Provider) arising from the performance of the Provider’s obligations under the Framework Agreement or a Call-Off Contract.
“Third Party Software”	means software which is proprietary to any third party which is or will be used by the Provider for the purposes of providing the Services other than software which is an Authority Software.
“Urgent”	means where a response is needed within 24 hours.

“Valid Invoice”	means an invoice containing the detailed information set out in clause C2 (Payment and VAT).
“Variation”	means any amendment of or change to the Framework Agreement or Call-Off Contract or change in which the Services are provided.
“VAT”	means value added tax charged or regulated in accordance with the provisions of the Value Added Tax Act 1994.
“Working Day”	means any day from Monday to Friday, excluding any bank or other national holidays in England, Wales or Scotland.
“Working Hours”	means between the hours of 06:00 – 20:00 on a Working Day.

FRAMEWORK AGREEMENT SCHEDULE 2

SPECIFICATION

PART 1: SPECIFIED REQUIREMENTS

The Specification of Requirements is attached within the Bravo contract record.

PART 2: THE PROVIDER’S LOT

The Provider has been awarded the Lot below for the specified Geographic Region:

LOT 2: Carcase Collection Services		
REGION	Awarded	Species covered
7 – South & East England	✓	ALL

APPENDIX A

GEOGRAPHICAL REGIONS MAPS

The Geographical Regions Maps are included as Annex 1 to the Specification of Requirements within the Bravo contract record.

APPENDIX B

LIST OF OUTCODES AND MAPS OF ASSIGNED AREAS

The List of Outcodes and Maps of Assigned Areas are included as Annex 2 to the Specification of Requirements within the Bravo contract record.

APPENDIX C

PERFORMANCE MANAGEMENT FRAMEWORK (INCLUDING KEY PERFORMANCE INDICATORS)

PERFORMANCE MANAGEMENT FRAMEWORK AGREEMENT (including Key Performance Indicators)

1 Performance Management

- 1.1 As part of the Authority's continuous drive to improve the performance of all contracts, this Performance Management Framework will be used to monitor, measure and control all aspects of the Provider's performance of contract responsibilities under the Call-Off Contract.
- 1.2 The purpose of this Performance Management Framework is to set out the obligations on the Provider, to outline how the Provider's performance will be evaluated and to detail the sanctions for performance failure. The Provider is responsible for the performance of any sub-contractors.
- 1.3 Key Performance Indicators (KPIs) are essential to align Provider performance with the requirements of the Contracting Body and to do so in a fair and practical way. KPIs must be realistic, achievable, and set to indicate where the service is failing if they are not achieved. Without the additional use of service credits, failure to meet KPIs will strain the relationship as delivery falls short of agreed performance standards. As a result, the only recourse would be to terminate the contract and seek an alternative Provider.
- 1.4 The use of a strong service credit regime accompanied by a proactive approach to correcting failures and addressing their cause improves the relationship and enables a partnership rather than a confrontational style of working. Its focus is on managing and improving service. It is not about taking cost out of the service.
- 1.5 KPIs are set out at Table A below. They will be monitored on a monthly, quarterly or annual basis as appropriate to the service and will form part of the contract performance review.
- 1.6 The Authority will be entitled to refine, vary or modify the KPIs, performance standards and service credits from time to time during the Contract Period through a variation to be agreed with the Provider using a Contract Change Note (CCN).
- 1.7 Where a KPI has a percentage measure, the Provider's performance will be rounded to the nearest whole number.

- 1.8 The Authority will produce a monthly and quarterly Performance Management report, to be sent to the Provider, detailing the Provider's performance against KPIs.
- 1.9 The Provider will maintain their own management reports, including Issues Log, which will include detail on periodic checks to ensure quality.
- 1.10 Any performance issues highlighted in the monthly reports will be addressed by the Provider, who will be required to provide an improvement plan to address all issues highlighted within a week of receipt of the report. Monthly performance management reports and KPI performance will be a key feature of Quarterly Contract Review meetings.
- 1.11 Where performance failure attributable to the Provider is identified in the Performance Management report and relates to the KPIs then the service credit regime may apply, at the sole discretion of the Authority.

2 Service Credits

- 2.1 The use of service credits is governed by the following principles:
- 2.2 Service credits sit within the wider service management approach being pursued by the Provider and the Contracting Body. Use of service credits does not preclude any other remedy for failure of performance available to the Contracting Body under the terms and conditions of the Call-Off Contract.
- 2.3 The service credit regime will be instigated on each occasion when there is a service failure (i.e. where a KPI is identified as having a 'Red status') within the performance monitoring period. Failure to meet a KPI may also give rise to a remediation plan.
 - KPIs with a service credit rating of 0 will have no associated service credit
 - KPIs with a service credit rating of 1 will have a service credit of 3% of the invoice amount for the monitoring period (the applicable quarterly period), applied for each KPI failure
 - KPIs with a service credit rating of 2 will have a service credit of 5% of the invoice amount for the monitoring period (the applicable quarterly period), applied for each KPI failure
 - The maximum annual service credit to be applied will be no more than 10% of the total annual contract value per Lot per Provider.
- 2.4 The Provider will provide the Authority with the information listed in the Specification and such other supporting information as the Authority may reasonably request in order to determine the proper application of any service credits due.
- 2.5 For services where the Provider is paid by the Authority, service credits will be paid to the Authority as a credit note to the next invoice.

- 2.6 For services where the Provider recovers costs directly, service credits will be paid to individual users of the service as a credit note to their next invoice. The Provider will propose how the service credit amounts will be applied to each user of the service.
- 2.7 The full, agreed service credit regime will operate from the initial delivery date until the end of the Contract Period. At the end of the first complete performance monitoring period, the Authority and the Provider will enter into good faith discussions to review the KPIs and assess their effectiveness. The KPIs may be adjusted to ensure that they are appropriate and achievable.

Table A. Key Performance Indicators

KPI	Lots	Description	Measure	KPI Target	Source(s)	Service Credit Rating
KPI 1 - Service Delivery	1	The Contactor notifies the Authority in writing, within one (1) Working Day, that it accepts or declines the Order for Services.	All Orders are returned to the Authority within one (1) Working Day, indicating whether the Provider accepts or declines the Order.	100%	APHA Reactor Removal Teams	2
KPI 1 - Service Delivery	2	The Provider collects and delivers the specified Carcase by the agreed timescales to the PME Provider.	Percentage of Carcases delivered the same day if requested before 12:00pm or to the agreed timescales when the collection is placed.	100%	Documentary evidence of the date and time the collection was requested and the date and time it was delivered.	2
KPI 2 - Service Delivery	1, 3, 4	Correctly identified animals, as detailed on the Order, to be killed and if required transported to the relevant PME facility.	All animals killed and transported to the relevant PME facility have been correctly identified.	100%	APHA Reactor Removal Team	2
KPI 3 - Service Delivery	1, 3, 4	Welfare at time of killing	Report by exception any welfare at time of killing issues to APHA Reactor Removal Team within 48 hours detailing date, time, method of killing and the welfare at time of killing issues.	100%	APHA Reactor Removal Team	2

KPI 4 – Contract Management	All	The Provider provides management and service capability information in a timely fashion for the contract and which meets the Authorities expectations.	The Provider meets required timescales and responds promptly to suitably addressed emails or telephone calls from the Authority.	100%	Management and Service Capability information provided by the required timescales.	1
KPI 5 – Invoicing	All	All invoices for Orders completed are accurate and received by the Authority within 10 (ten) calendar days of the relevant time period detailed in the contract specification.	Percentage of invoices received on time as detailed in the contract specification.	100%	APHA Finance Teams	1

APPENDIX D

GOVERNANCE AND CONTRACT MANAGEMENT

1. APHA will manage the contracts for Services resulting from this Procurement on behalf of the Authority. APHA will appoint a:
 - Supplier Liaison Officer (SLO)
 - Deputy SLO (DSLO)
 - Contract Manager (CM)
2. APHA will decide as appropriate for each contract whether the SLO or DSLO is the principal point of contact.
3. The Provider will appoint a corresponding Service Manager (SM) and Deputy Service Manager (DSM).
4. For Lots 1 and 2, Contract review meetings will be held with each Provider, principally to review progress and operational delivery of the Contract, but also including key performance indicators (KPIs), invoicing, risks and issues. A Defra Group Commercial (DGC) representative, with responsibility for procurement on behalf of the Authority, may be present at contract review meetings.
5. The Provider will submit an exception report to raise any issue requiring authorisation by APHA more immediately than the standard six-monthly reporting.
6. A strategic review meeting will be held annually. The meeting will review performance over the past year and look ahead to the next year, including strategic and financial issues. The risk, issues and actions register will be reviewed.
7. Issues which cannot be resolved by the SLO and SM (and/or their respective Deputies) through routine contact will be referred to the CM who may either mediate a solution or raise the matter at the next Contract review meeting as appropriate, involving the Authority as necessary.
8. Other ad hoc meetings may be held, at the discretion of APHA or the Authority or at the request of the Provider, throughout the life of the contract to discuss specific issues.
9. The Provider 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.

10. Contract review meetings will be held at the most mutually convenient location, usually face-to-face, but with teleconference facilities available.
11. Contract review meetings will be minuted, with secretariat support and actions provided by APHA, with agreed dates for completion. The Provider will maintain a joint register of risks, issues and actions.
12. The CM should ensure that all meeting minutes, risk registers and any other contract documentation is recorded against the Authority's contract records.
13. For Lots 1 and 2, Table B gives the purpose of each of these meetings with each Provider, and the required attendees.
14. Lots 3 and 4 will be managed by means of an annual capability review and not as detailed in Table B.

Table B. Contract Management Meeting Schedule for Lots 1 and 2

Meeting	Attendance	Content
Specific Issues, ad hoc <i>Face-to-face / Telecon</i>	APHA: • SLO (Chair) and/or DSLO • Secretariat support Provider: • SM and/or DSM Any other APHA, Authority or Provider staff needed to progress the issue. NB - The CM or Head of Contract Management may alternatively Chair the meeting if facilitation is required.	• Urgent issues • Specific technical or contractual issues requiring detailed discussion
Six monthly Contract Review Meeting <i>Usually face-to-face</i>	APHA: • SLO (Chair) and DSLO • CM • Any other APHA Business area representative • Head of Contract Management (<i>if required</i>) • Secretariat support • DGC representative (<i>if required</i>) Provider: • SM and/or DSM	• Current and Outstanding Operational issues • Performance in previous period, including detailed review of KPIs • Risks and issues log • Review of Action Log • Specific service issues (including any escalated issues from Monthly Contract Review Meetings) • APHA Update • Any issues from Provider • Financial update
Annual Review Meeting <i>Face-to-face</i>	APHA: • SLO (Chair) and DSLO • CM • Any other APHA Business area representative • Head of Contract Management • Secretariat support • DGC representative (<i>optional, if required</i>)	• Annual Service Review against KPIs, including Service Credits • Risks and issues log • Review of Action Log • Specific service issues (including any escalated issues) • Service wide issues • Financial update

	• Head of Service (<i>optional, if required</i>) • Welsh Government representative (<i>optional, and applicable to Lots that serve Welsh regions only</i>) • Scottish Government representative <i>optional, and applicable to Lots that serve the Scottish region only</i>) • Authority representative (<i>optional, and applicable to Lots that serve English regions only</i>) Provider: • SM and/or DSM • Any other representative that the Provider feels relevant from within their organisation	• Strategic Overview (including any policy updates)
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FRAMEWORK AGREEMENT SCHEDULE 3

PRICING MATRIX

1 PROVIDER RATES

- 1.1 Please note that all rates, as part of the Response, were provided within the Commercial Envelope (for the relevant Lot(s)) contained within Bravo.
- 1.2 For Lots 1 and 2 only, it is essential to note that rates provided as part of the Response will be fixed for the first year of the Framework Agreement. Orders will be placed in accordance with the Selection Methodology in paragraph 10 of the Specification of Requirements / Schedule 4 of this Contract.
- 1.3 For Lots 1 and 2 only, Providers shall be entitled to propose a variation to the rates payable by the Authority for Services on an annual basis. Any agreed variations take effect on the next anniversary of commencement of the Framework Agreement. Any proposed variation to the rates should be submitted, in writing, together with appropriate justification to support the proposal, to the Authority's Contract Manager at least two (2) calendar months before the variation is proposed to take effect. Justification should include the reasons for requesting the variation, for example detailing an increase in costs for a specific area of Service, including reasons for any rate decrease. The Authority reserves the right to refuse a proposed variation if it considers that appropriate justification for the variation is not provided, or if it exceeds the average rate of inflation as measured by the CPI over each complete month of the current financial year.
- 1.4 For Lots 1 and 2 only, the Authority shall be entitled to propose a variation to the rates payable by the Authority for Services annually. Any agreed variations take effect on the next anniversary of the commencement of the Framework Agreement. Any proposed variation to the rates should be submitted, in writing, together with appropriate justification to support the proposal, to the Provider's Service Manager at least two (2) calendar months before the variation is proposed to take effect.
- 1.5 The Contract Price for Lots 1 and 2 will be calculated on the basis of the current applicable rates for all Services provided. For example, if a Lot 1 Service is provided the Contract Price will be the total of the applicable Mileage Rate, Kill Rate and PME rate (where appropriate) for any given Order.

- 1.6 For Lots 3 and 4 only, it is essential to note that rates provided as part of the Response will be the maximum chargeable rates that will apply throughout the duration of the Framework Agreement. Call-Off Contracts will be placed in accordance with the Selection Methodology in Section 11 of the Specification of Requirements.
- 1.7 An overview of the different applicable rates for each Lot, are detailed in Table One with further detail on each rate stated in the sections below.

Table One: Rates by Framework Agreement Lot

	Lot 1	Lot 2	Lot 3	Lot 4
Kill Rate	✓			
Emergency Kill Rate	✓			
Loaded & Unloaded Mileage Rates	✓	✓		
Standard PME Rate	✓			
Extended PME Rate	✓			
Hourly Rate & Day Rate			✓	✓
Headage Rate			✓	✓
Quarantine Fee*			✓	✓

*Note that this is taken as a proportion of the Day Rate so there is no Response for this fee.

1.8 **Kill Rate (applicable to Lot 1 only)**

The price charged per animal killed, including all costs associated therewith, provision of all facilities, disposal of waste from the kill, and all associated administrative costs.

The Provider has provided a Kill Rate for each species and Region it is appointed to.

Table Two

	<u>Kill Rate per Animal</u>							
	Cattle, including buffalo and bison			Deer	Pigs	Sheep / Goats	Camelids (i.e. Alpacas / Llamas / Guanacos)	Equine
	0 -12 Months old	13 -24 Months old	Over 24 Months old					
Region 3								
Region 4								
Region 5								
Region 6								
Region 7								
Region 8								
Region 9								

1.9 **Emergency Kill Rate** (applicable to Lot 1 only)

An additional price charged per animal for all species killed from an Order received for processing the same Working Day or out of Working Hours, including all costs associated therewith, provision of all facilities, disposal of normal waste from the kill, and all associated administrative costs.

This rate will be chargeable in addition to the **Kill Rate specified at Table 2.**

Table 3

Geographical Region	Emergency Kill Rate (per animal)
Region 3	
Region 4	
Region 5	
Region 6	
Region 7	
Region 8	
Region 9	

1.10 **(Loaded and Unloaded) Mileage Rates** (applicable to Lots 1 and 2)

The (loaded and unloaded) Mileage Rates will be the prices charged per mile travelled as specified in the Order Form. They are to include, but not be limited to, the costs of the driver, driver's mate, all fuels, insurance, tolls, ferries and vehicle

servicing costs as appropriate.

The length of the journey and total Mileage Rates payable will be calculated by the Contracting Body using a route planning tool (see Selection Methodology at Section 10 of the Specification of Requirement).

The Contracting Body will not accept any additional charges associated with the transportation of animals that are not included in the tendered Mileage Rates. Where restricted access to Notified Premises on which animals are located results in a number of smaller vehicles being required for the same pick up, the Provider shall seek written approval from the Contracting Body for multiple Mileage Rates to be chargeable for each vehicle used. An email may constitute written approval.

If the Provider uses multiple vehicles for collection of animals for their own convenience, the Contracting Body will not be liable to pay multiple Mileage Rates. Only Orders for which there is a recognisable need for multiple vehicles to be used will be granted the Authority's approval for multiple Mileage Rates to be chargeable.

Table 4

	<u>Rate per mile</u>				
	Unloaded Rate	Loaded Rate 1 – 5 Carcases	Loaded Rate 6 – 19 Carcases	Loaded Rate 20 – 30 Carcases	Loaded Rate 31 or more carcases
Region 3					
Region 4					
Region 5					
Region 6					
Region 7					
Region 8					
Region 9					

For the avoidance of doubt, if the Provider sub-contracts any haulage activity, the location of the Provider's Base Location for that Region will be used in the calculation of all mileage. Any additional mileage between the Provider's Base Location and those of the sub-contractor shall not be chargeable to the Contracting Body.

Where multiple pick-ups of Carcases occur, the Loaded Mileage Rate shall be based on the total number of carcases carried after the final collection. Payment made by the Contracting Body shall be for the journey from the first Notified Premises via other Notified Premises to the final drop-off location.

The Provider should endeavour to carry out multiple pick-ups using the lowest practical mileage.

1.11 Standard PME Rate (applicable to Lot 1 only)

This rate is only applicable to Service C within Lot 1. It covers the price(s) charged per PME facility for when the facility is required and will include all costs associated with the service provision. This includes the time for preparation of the Carcase by the Provider and use of the PME facility whilst the Contracting Body veterinarian is carrying out the PME. It does not include the time when the Carcase is left waiting for either preparation to begin, or for the PME to start once preparation has been completed.

Table 5

	<u>Standard PME Rate</u>		
	Hourly Rate	Half-day Rate	Daily Rate
Region 3			
Region 4			
Region 5			
Region 6			
Region 7			
Region 8			
Region 9			

The Hourly Rate is the price charged per one (1) hour, within the hours of 06:00 to 20:00 Monday to Sunday.

The Half Day Rate is the price charged for four (4) hours, within the hours of 06:00 to 20:00 Monday to Sunday. The half day rate will apply for the first four (4) hours that the facility is required and any additional hours will then be applied at the Hourly Rate. However, where the total number of hours spent results in the cost exceeding the Day Rate, the Day Rate shall apply.

The Day rate is the price charged for eight (8) or more hours, within the hours of 06:00 to 20:00 Monday to Sunday.

1.12 Extended PME Rate (applicable to Lot 1 only)

This rate is only applicable to Service D within Lot 1. It covers the price charged per animal when an extended post mortem is required and includes all costs associated with the service provision.

Table 6

	<u>Extended PME Rate</u>
	Rate per animal
Region 3	
Region 4	
Region 5	
Region 6	
Region 7	
Region 8	
Region 9	

1.13 Hourly Rate and Day Rate (applicable to Lots 3 and 4 only)

The Hourly rate is the price charged per one (1) hour, within the hours of 06:00 to 20:00 Monday to Sunday. Where the total number of hours spent results in the cost exceeding the Day Rate, the Day Rate shall apply.

The Day rate is the price charged for one (1) day, whereby a day is considered for this Contract as a period of ten (10) hours, within the hours of 06:00 to 20:00 Monday to Sunday.

The Hourly Rate and Day Rate will only be chargeable from the time that the Provider arrives at the first location, up until the Provider leaves the final location.

The Hourly Rate and Day Rate will be the amount charged per Slaughterman required for Lot 3 and 4 Services.

Prices include all of the direct delivery costs including any ammunition or equipment, travel and subsistence and any other additional costs.

Table 7

	Hourly Rate	Day Rate
Region 1		
Region 2		

Region 3		
Region 4		
Region 5		
Region 6		
Region 7		
Region 8		
Region 9		

1.14 Headage rate (applicable to Lots 3 and 4 only)

The Headage Rate is the price charged per animal processed for Lot 3 and 4 Services.

Table 8

	Rate per animal
Region 1	
Region 2	
Region 3	
Region 4	
Region 5	
Region 6	
Region 7	
Region 8	
Region 9	

1.15 Quarantine Fee (applicable to Lots 3 and 4 only)

In an Outbreak or Incident, 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 the Provider's staff member has normal day to day employment obligations requiring direct contact with live susceptible animals, and the required quarantine period (72/96 hours dependent on the disease and provision of suitable evidence by the Provider to confirm the impact of the quarantine on the staff member's normal obligations) prevents them from performing other usual work/tasks relating to their employment, a Quarantine Fee may be paid by the Authority or any other Contracting Body to the Provider for the required period of quarantine (subject to the type of disease).

The Quarantine Fee is calculated as 70% of a 10 hour day, up to a maximum of 4 days (28 hours).

FRAMEWORK AGREEMENT SCHEDULE 4

CALL-OFF PROCEDURE

GENERAL

1. This Schedule sets out the Selection Methodology that will be used to determine which Framework Provider(s) who have been appointed as potential providers of Services under the Framework Agreement will provide the Services in respect of a particular Call-Off Contract and the procedure for placing Orders.
2. The Selection Methodology used to determine which Framework Provider(s) will provide Services is:
 - 2.1. where Services fall within Lots 1 or 2, the Selection Methodology specified at paragraph 6 of this Schedule; and
 - 2.2. where Services fall within Lots 3 or 4, the Selection Methodology specified at paragraph 7 of this Schedule.
3. The procedure for placing Orders is:
 - 3.1. where Services fall within Lot 1, the order procedure specified at paragraph 8 of this Schedule;
 - 3.2. where Services fall within Lot 2, the order procedure specified at paragraph 9 of this Schedule;
 - 3.3. where Services fall within Lots 3 or 4, the order procedure specified at paragraph 10 of this Schedule.
4. The Authority or Contracting Body will be entitled to award a Call-Off Contract to one or more Framework Provider(s) to provide the Services which the Authority or Contracting Body requires.
5. The Authority and any other Contracting Body may place orders for Services in Lots 1, 3 and 4. Orders for Lot 2 Services (Carcase Collection Services) may only be placed by the Authority (or APHA acting for the Authority).

6. Selection Methodology for Lots 1 and 2

- 6.1. For Lots 1 and 2, where multiple Providers are appointed to the same Lot for a Geographical Region, the following selection methodology will be used to determine which Provider an Order is allocated to :

- 6.1.1. For all Orders, the Contracting Body will identify the Notified Premises and its corresponding County Parish Holding (CPH) number if applicable. The Contracting Body will also identify the Provider's approved Base Location for the relevant Geographical Region in which the Notified Premises is located.
- 6.1.2. Any distances required to allocate the Order will be taken from the centre point of the relevant CPH, any further locations as applicable and the location of each Provider's Base Location, and determined by shortest distance possible for the type of vehicle likely to be used for the collection of the particular species of animals. The Contracting Body reserves the right to vary the route planning tool it uses to determine distances from time to time as it sees fit
- 6.1.3. If a Provider has multiple approved Base Locations in the Region, then a calculation will be made for each applicable location, including any nominated and approved Sub Contractors.
- 6.1.4. A Contract Price for the Order will be calculated based on the Provider's applicable Mileage Rate, Kill Rate and PME rate (calculated using the prices submitted in the Pricing Schedule and as may be amended from time to time in accordance with the provisions of Schedule 3).
- 6.1.5. Orders will be allocated to the Provider that offers the Contracting Body the lowest Contract Price based on the calculation made.
- 6.1.6. Orders that contain multiple species will be allocated to the Provider that offers the Contracting Body the lowest Contract Price for the Order as a whole (i.e. all species within that specific Order for one farm), to enable all species to be dealt with under one Order and by one Provider.
- 6.1.7. Orders will then be processed for Lot 1 as per paragraphs 5.10 to 5.13 of the Specification of Requirements and for Lot 2 as per paragraph 6.14 of the Specification of Requirements.
- 6.1.8. In cases where the Provider with the lowest Contract Price does not have sufficient capacity to accept an Order, the Contracting Body will allocate to the next lowest Provider until an available Contractor is confirmed.
- 6.1.9. In cases where none of the Providers approved for the relevant Geographical Region have sufficient capacity to accept the Order, the Contracting Body reserves the right to allocate the Order to a Contractor approved for a neighbouring Geographical Region to ensure robust disease control and surveillance measures are maintained.

7. Selection Methodology for Lots 3 and 4

7.1 For Lots 3 and 4 only, the following Selection Methodology will apply.

- 7.2 The Contracting Body will apply the mechanisms detailed below (Mini-Competition or Direct Award), taking into account the type, nature and extent of the Outbreak or Incident.
- 7.2 There is no obligation on Contractors to respond to every Mini-Competition/Direct Award enquiry but the Authority reserves the right to remove a Contractor (a) from the Framework or (b) from appointment to a particular Geographical Region in the event that a Contractor respectively either consistently fails to deliver in line with the Framework Agreement response timeframes for responding to a Mini-Competition as specified at the point of Call-Off and/or repeatedly fails to demonstrate a capability to meet the requirements of the Framework Agreement.
- 7.3 The total Contract Period (including any extension) of any Call-Off Contract shall not exceed two years without the prior Approval of the Authority. Call-Off Contracts may include the provision of Services for one or more Contracting Bodies.

7.4 Mini-Competition

- 7.5 When a Contracting Body has a requirement for Lot 3 or 4 Services through the Framework Agreement a Call-Off Contract will be awarded via a Mini-Competition, save that in the case of an Incident or Outbreak the Contracting Body reserves the right to make a direct award in accordance with paragraph 7.15. A Mini-Competition will re-open competition to all Providers under the Framework Agreement in the relevant Lot and Geographical Region.
- 7.6 The Contracting Body will have the discretion, subject to the value, complexity or risk associated with the requirement, to procure the Services via a Mini-Competition either by issuing a Request for Quote (RFQ) or an Invitation to Tender (ITT) to all Providers who are capable of providing the proposed Services. As a guide complex, high value, repetitive, non-urgent and/or longer term requirements are likely to be issued in the form of an ITT; less complex, low value, single use and/or short term requirements are likely to be issued in the form of an RFQ.
- 7.7 Use of the Mini-Competition Procedure does not mean that the Specification of Requirements set out for this Framework Agreement can be changed, although a more precise statement of the requirements may be made in the Order Form (Annex 4 to the Specification of Requirements).

To award a Call-Off Contract via the Mini-Competition:

1. The Authority will identify the relevant Lot and Geographic Region, based on the type of Services required and location of the premises where those Services are required.
 2. The Authority will shortlist all Providers within the Lot and Geographical Region who have the relevant capability (i.e., capability according to the species they can provide Services for). Capability will be assessed based on information provided in the Response.
 3. The Authority will issue an invitation (in the form of an ITT or RFQ) to take part to all shortlisted Providers either via Bravo, the Authority's e-tendering system or by email where the Contracting Body does not have access to an e-tendering system;
 4. The invitation to take part will specify a fixed time limit for submission of proposals. Such time limit shall be of sufficient duration to allow proposals to be submitted, taking into account factors such as the complexity of the Contracting Body's requirements and the time needed to compile and submit a proposal;
 5. The invitation will seek proposals for fulfilling the requirement, including for example:
 - i. costs to meet the specific requirements
 - ii. particular delivery timescales
 - iii. key personnel
 - iv. particular payment profiles
 - v. particular associated services (e.g. training)
 6. The invitation will also contain a copy of the draft Order Form (Annex 4 of the Specification of Requirements), completed with details of the required Services and other details of the proposed resultant Call-Off Contract completed as far as possible and indicating where information from the winning Provider's proposal will be needed as an input to complete the Order Form which will then be issued to the successful Provider.
- 7.8 When invited by the Contracting Body the Providers will, via the Bravo system or by email, either submit a written proposal or decline the invitation to take part in the re-opening of competition.
- 7.9 The Contracting Body reserves the right to discuss its outline scope of services simultaneously with all Providers and if necessary make modifications in its sole discretion to any outline scope of services before it issues its written ITT or RFQ for Call-Off Contracts.
- 7.10 All technical questions included as part of an ITT or RFQ will be of a nature to those contained within the Framework Agreement ITT, but more specific to the Contracting Body's requirements.

7.11 The Contracting Body will evaluate all the responses submitted for each specific Mini-Competition to determine which response is the most economically advantageous. Evaluation will be based on technical expertise and price. Technical expertise will form 50-70% of the total score. Price will form 30-50% of the total score.

7.12 In evaluating price, the maximum score will be awarded to the cheapest price submitted by a Tenderer. The remaining Tenderers will receive marks on a pro rata basis from the cheapest to the most expensive price.

For example, if the weighting was 30% then the calculation used would be as follows:

Score = Lowest Tender Price/ Tenderer's Tender Price x 30% (Maximum available marks)

For example, if three Tenders are received and Tenderer A has quoted £3,000 as their total price, Tenderer B has quoted £5,000 and Tenderer C has quoted £6,000 then the calculation will be as follows:

Tenderer A Score = £3000/£3000 x 30% (Maximum available marks) = 30%

Tenderer B Score = £3000/£5000 x 30% (Maximum available marks) = 18%

Tenderer C Score = £3000/£6000 x 30% (Maximum available marks) = 15%

The Call-Off Contract will be awarded to the most economically advantageous tender.

7.13 The Contracting Body will notify all Providers invited to tender/quote of the outcome of that evaluation.

7.14 The Contracting Body reserves the right not to award a Call-Off Contract following a Mini-Competition.

7.15 Direct Award

In the event of an Outbreak or Incident a Contracting Body may adopt the following Direct Award Procedure:

1. The Contracting Body will identify the relevant Lot and Geographical Region, based on the type of Services required and location of the premises where provision of the Services are required.
2. The Contracting Body will shortlist all Providers from that Lot and Geographical Region with the relevant capability, as stated in their Response.

3. The Contracting Body will calculate a total price for each Provider using their best estimate of the Services required and the prices submitted as part of the Response. The Hourly Rates shall be used by the Contracting Body when calculating the cost. All shortlisted Providers will be ranked according to the total price calculated.
4. The Provider at rank 1 (being the cheapest Price according to the Contracting Body's calculations above) will be contacted (usually by telephone) and asked to confirm that they are able to supply the Services in the timeframe specified by the Contracting Body. The Provider shall also be asked to confirm that it can provide Services for the price calculated by the Contracting Body (or lower).
5. If the Provider does not respond immediately or if it is not able to meet the requirement or provide the Services for the price quoted by the Contracting Body then the next Provider will be contacted, and so on.

8. Order procedure for Lot 1

- 8.1. If a Lot 1 Service is required a Provider will be selected in accordance with the Selection Methodology specified at paragraph 6 and, subject to paragraph 8.4, will receive an Order Form from the Contracting Body with a request to provide Services, normally providing a minimum of forty-eight (48) hours' notice, although less notice is possible in an Incident, Outbreak or Urgent welfare response.
- 8.2. The Order Form shall specify details of the Service required:
 - The date on which the PME will be undertaken (if appropriate);
 - The location, identity, species and number of animal(s);
 - Contact details of the Keeper;
 - Details of the processes required once the animal(s) have been culled (if appropriate);
 - Nominated PME facility;
 - Standard or Extended PME and related instructions;
 - Further information to allow adequate planning of the operation, for example if there are enhanced biosecurity requirements which the Provider will need to comply with; and
 - Details of the records that the Provider will need to keep and return to the Contracting Body.
- 8.3. Following receipt of an Order Form, the Provider shall:
 - 8.3.1. Notify the Contracting Body in writing, within one (1) Working Day, that it accepts the Order for Services by signing and returning the Order Form to the Authority, or;
 - 8.3.2. Notify the Contracting Body in writing that it declines to accept the Order for Services and specify the reason(s) for the decision no later than one (1) Working Day from date of receipt of the Order,

unless the Contracting Body specifies a shorter response time in an Incident, Outbreak or Urgent welfare situation, in which case the Provider shall respond within such shorter time.

- 8.4. In the case of an Urgent request the Contracting Body on-call duty veterinarian will make arrangements with the Provider and Keeper verbally to place an Order. By accepting an Order verbally the Provider agrees to perform the Service in accordance with the terms and conditions of the Call-Off Contract. The verbal Order will be followed up with a written Order Form on the next Working Day.

9. Order procedure for Lot 2

- 9.1. Only the Authority may place orders for Lot 2 Services, other Contracting Bodies may not place orders for Lot 2 Services.
- 9.2. The arrangements for Lot 2 Services shall be made between the PME Provider acting on the instructions of the Authority, the Keeper and the Provider providing the Service, as detailed below:
 - 9.2.1. The Keeper's private veterinary surgeon (PVS) will call the PME Provider to discuss whether a post mortem is required. The PME Provider will then triage and decide whether the case is of surveillance value.
 - 9.2.2. If a Carcase is deemed of surveillance value the PME Provider will, using the Selection Methodology provided by the Authority, identify the most economically advantageous Provider for provision of the Service.
 - 9.2.3. The PME Provider will contact the Provider identified in accordance with the Selection Methodology, to place an Order and inform the Provider that a Carcase will need transferring to the PME Provider Site. This will usually be via telephone where the PME Provider will provide the Provider with details of the Notified Premises, veterinary practitioner, and Carcases being submitted. An estimated time of arrival at the PME Provider Site should be agreed at this point. If the arrival time does not meet the requirement of the PME Provider (to allow the Carcase to be of sufficient surveillance value), then the PME Provider reserves the right not to place the Order at this time and may contact the next Provider identified by the Selection Methodology.
 - 9.2.4. The Provider must confirm whether it accepts or declines an Order immediately. If a Provider fails to respond immediately the PME Provider may contact an alternative Provider.

- 9.3. By verbally accepting an Order placed by a PME Provider acting for the Authority the Provider agrees to perform the Service in accordance with the terms and conditions of the Call-Off Contract.

10. Order procedure for Lots 3 and 4

- 10.1. The Contracting Body shall notify the successful Provider(s) following the process set out at paragraph 7 of this Schedule and place a completed Order Form (in substantially the form as specified at Schedule 6) which:

- 10.1.1. states the Services and requirements;
- 10.1.2. identifies the Lot in which the award is made;
- 10.1.3. states the price payable for the Services and requirements in accordance with the Pricing Matrix applicable for the relevant Lot;
- 10.1.4. incorporates the Call-Off Terms and Conditions; and
- 10.1.5. includes any other requirements specified by a Contracting Body and any details as inputted by the Provider as part of the Call-Off Procedure.

- 10.2. Following receipt of an Order Form, the Provider shall:

- 10.2.1. if awarding via a Mini-competition in accordance with paragraph 7, notify the Contracting Body in writing that it accepts the order for Services by signing and returning the Order Form to the Contracting Body within three (3) calendar days or within the timeframe as otherwise instructed by the Contracting Body from date of receipt of the Order Form; or
- 10.2.2. if awarding via a direct award in accordance with paragraph 7, notify the Contracting Body that it accepts the order for Services in writing or via telephone followed by signing and returning the Order Form, within one (1) calendar day or within the timeframe as otherwise instructed by the Contracting Body from date of receipt of the Order Form.

FRAMEWORK AGREEMENT SCHEDULE 5

CALL OFF TERMS AND CONDITIONS

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A. GENERAL PROVISIONS

A1 Definitions and Interpretation:

- A1.1 In this Call-Off Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 to the Framework Agreement or the relevant schedule to the Framework Agreement.
- A1.2 If a capitalised expression does not have an interpretation in Schedule 1 to the Framework Agreement or the relevant schedule to the Framework Agreement, it shall have the meaning given to it in this Call-Off Contract. If no meaning is given to it in this Call-Off Contract, it shall in the first instance be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- A1.3 The interpretation and construction of this Call-Off Contract shall be subject to the following provisions:
- A1.3.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - A1.3.2 words importing the masculine include the feminine and the neuter;
 - A1.3.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
 - A1.3.4 references to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;
 - A1.3.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - A1.3.6 the words “other”, “in particular”, “for example”, “including” and similar words, shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”; and
 - A1.3.7 headings are included in the Call-Off Contract for ease of reference only and shall not affect the interpretation or construction of the Call-Off Contract.

A1.4 If there is any conflict between the provisions of this Call-Off Contract and the provisions of the Framework Agreement, the provisions of the Framework Agreement shall prevail over those of the Call-Off Contract save that:

A1.4.1 any special conditions or variations set out in the Order Form (provided that such conditions or such variations do not amount to a material change of the Framework Agreement within the meaning of the Public Contracts Regulations) forming part of the Call-Off Contract shall prevail over Framework Agreement; and

A1.4.2 subject to clause A1.5, the Call-Off Contract shall prevail over the Tender.

A2 Customer's Obligations

A2.1 Save as otherwise expressly provided, the obligations of the Customer under the Call-Off Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Call-Off Contract shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Call-Off Contract (howsoever arising) on the part of the Customer to the Provider.

A3 Provider's Status

A3.1 At all times during the Contract Period the Provider shall be an independent contractor and nothing in the Call-Off Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Call-Off Contract.

A3.2 The Provider shall not (and shall ensure that any other person engaged in relation to the Call-Off Contract shall not) say or do anything that might lead any other person to believe that the Provider is acting as the agent or employee of the Customer.

A3.3 Where the Provider is an individual:

A3.3.1 the Provider warrants and represents that he is providing Services as an independent contractor and nothing shall render him an employee, worker, agent or partner of the Customer and the Provider shall not hold himself out as such; and

A3.3.2 the Provider agrees that this Call-Off Contract constitutes a contract for the provision of services and not a contract of employment and accordingly, the Provider shall be fully responsible for and shall indemnify the Customer for and in respect of any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services, where the recovery is not prohibited by Law. The Provider shall further indemnify the Customer

against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Customer in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the Customer's negligence or wilful default.

A4 Contract Period

- A4.1 The Call-Off Contract shall take effect on the Commencement Date and shall expire automatically at midnight on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Call-Off Contract, or otherwise lawfully terminated, or extended under clause F8 (Extension of Contract Period). The total Contract Period (including any extension) of this Call-Off Contract shall not exceed two years without the prior Approval of the Authority.

A5 Notices

- A5.1 Subject to clause 40.3, where this Call-Off Contract states that a notice or communication between the Parties must be "written" or "in writing" it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Bravo. The address details for each Party shall be as stated in the Order Form.

- A5.2 If it is not returned as undelivered, a notice served:

A5.2.1 in a letter is deemed to have been received 2 Working Days after the day it was sent; and

A5.2.2 in an email or via Bravo is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day, or on the next Working Day if not sent on a Working Day,

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

- A5.3 Notices pursuant to clauses G3 (Force Majeure), I2 (Dispute Resolution) or to terminate this Call-Off Contract or any part of the Services are valid only if served in a letter by hand, recorded delivery or special delivery.

- A5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

A6 Mistakes in Information

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

A7 Conflicts of Interest

- A7.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff is placed in a position where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary

or personal interests of the Provider and the duties owed to the Customer under the provisions of the Call-Off Contract. The Provider will notify the Customer without delay giving full particulars of any such conflict of interest which may arise.

- A7.2 The Customer reserves the right to terminate the Call-Off Contract immediately by notice in writing and/or to take or require the Provider 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 Provider and the duties owed to the Customer under the provisions of the Call-Off Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

A8 The Contracts (Rights of Third Parties) Act 1999

- A8.1 A person who is not a Party to the Call-Off Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

B. PERFORMANCE

B1 The Specification

- B1.1 In consideration of the Provider supplying the Services during the Contract Period in accordance with the Customer's requirements as set out in the Specification and the provisions of the Call-Off Contract the Provider shall be paid the Contract Price.
- B1.2 Wherever reasonably requested to do so by the Customer, the Provider shall co-ordinate his activities in supplying the Services with those of the Customer and other contractors engaged by the Customer.
- B1.3 Timely supply of the Services shall be of the essence of the Call-Off Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date. If the Provider fails to deliver the Services within the time promised or specified in the Specification (other than as a direct result of the Default of the Customer), the Customer is released from any obligation to accept and pay for the Services, as applicable, and may terminate the Call-Off Contract, in either case without prejudice to any other rights and remedies of the Customer.

B2 Inspections

- B2.1 If requested by the Customer, the Provider shall permit the Customer to enter the Provider's premises to inspect and examine the manner in which the Provider supplies the Services.

- B2.2 Inspections carried out pursuant to clause B2.1 shall be carried out during business hours on reasonable notice to the Provider, provided that, in the event of an emergency, the Provider shall grant the Authority immediate access to its premises. The Provider shall provide free of charge all such reasonable access and facilities as the Customer may reasonably require for such inspection and examination. In this clause B2, the supply of Services includes planning or preliminary work in connection with the supply of the Services.

B3 Provision and Removal of Equipment

- B3.1 The Provider shall provide all equipment, consumables, plant, materials and other such items and resources necessary for the supply of the Services, unless otherwise agreed by the Customer in writing.
- B3.2 The Provider shall not deliver any Provider Equipment to nor begin any work on the Premises without obtaining prior Approval. Any or all Provider Equipment may be subject to cleansing and disinfection biosecurity measures and the Provider shall, and shall ensure that all its Staff and Sub-Contractors, comply with all instructions of the Customer or Authority representatives regarding the cleansing and disinfection of Provider Equipment.
- B3.3 All Provider Equipment brought onto the Premises shall be at the Provider's own risk and the Customer shall have no liability for any loss of or damage to any Provider Equipment unless the Provider is able to demonstrate that such loss or damage was caused or contributed to by the Customer's Default. For the avoidance of doubt, the Customer shall have no liability for any loss of or damage to any Provider Equipment where this arises from compliance with cleansing and disinfection measures imposed at the Premises.
- B3.4 The Provider shall provide for the haulage or carriage of all Provider Equipment to the Premises and the removal of Provider Equipment when no longer required at its sole cost.
- B3.4 Unless otherwise agreed, Provider Equipment brought onto the Premises will remain the property of the Provider.
- B3.5 Any Customer Equipment provided to the Provider shall remain the property of the Customer and shall on request be decontaminated and delivered to the Customer as directed by the Customer. If the cost of any equipment is reimbursed to the Provider, such equipment shall be considered to be Customer Equipment. The Provider will keep a proper inventory of such Customer Equipment and will deliver that inventory to the Customer on request and on completion of the provision of Services under this Call-Off Contract.
- B3.6 The Provider shall maintain all equipment (including Provider Equipment and Customer Equipment) within the Premises in a safe and serviceable condition and in accordance with the instructions of the Customer or Authority's representatives at the Premises. To the extent it is practicable, this will include maintaining all equipment in a clean condition.

B3.7 The Provider shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:

- (a) remove immediately from the Premises any Provider Equipment which in the reasonable opinion of the Customer is to the extent required under the Call-Off Contract, either unduly hazardous, noxious or not in accordance with the Call-Off Contract; and
- (b) replace such item with a suitable substitute item of Provider Equipment.

B3.8 On completion of the provision of Services under this Call-Off Contract, the Provider shall remove the Provider Equipment together with any other materials used by the Provider to supply the Services and shall leave the Premises in a clean, safe and tidy condition unless otherwise agreed by the Customer. The Provider is solely responsible for making good any damage to those Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Provider or any Staff, unless such damage is a result of the Services as agreed by the Parties.

B4 Manner of Carrying Out the Services

B4.1 The Provider shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Call-Off Contract, the Provider shall agree the relevant standard of the Services with the Customer prior to the supply of the Services and, in any event, the Provider shall perform its obligations under the Call-Off Contract in accordance with the Law and Good Industry Practice.

B4.2 The Provider shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services. The Provider shall ensure that those Staff are properly managed and supervised.

B4.4 The Provider shall continue to perform all of its obligations under this Call-Off Contract and shall not suspend the provision of the Services, notwithstanding:

- (a) any withholding or deduction by the Customer of any sum due to the Provider pursuant to the exercise of a right of the Customer to such withholding or deduction under this Call-Off Contract; and/or
- (b) the existence of an unresolved dispute.

B5 Provider's Staff

B5.1 The Provider shall:

B5.1.1 ensure that all Staff:

- a. are appropriately qualified, trained and experienced to perform its obligations under this Call-Off Contract
- b. exercise reasonable skill, care and diligence in providing the Services;

- c. when attending the Premises, comply with all instructions of the Customer and/or Authority's representative in control of the Premises;
 - d. in respect of the provision of Services, are lawfully entitled to work in the United Kingdom
- B5.1.2 retain overall control of the Staff at all times so that the Staff shall not be deemed to be employees, agents, workers or contractors of the Customer;
- B5.1.3 comply with all applicable Laws relating to its Staff, in particular the Modern Slavery Act 2015, the Gangmasters (Licensing) Act 2004 and the Working Time Regulations 1998 (SI 1998/1833) (as amended);
- B5.1.4 be liable at all times for all acts and omissions of Staff, so that any act or omission of Staff which results in a Default under this Call-Off Contract shall be a Default by the Provider.
- B5.2 The Customer may, by written notice to the Provider, refuse to admit onto, or withdraw permission to remain on, the Premises:
 - B5.2.1 any member of the Staff; or
 - B5.2.2 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. The Provider shall ensure that the relevant person who is not permitted to remain on the Premises immediately complies with any instructions to leave the Premises.
- B5.3 At the Customer's written request, the Provider shall provide a list of the names and addresses of all persons who may require admission in connection with the Call-Off Contract to the Premises, specifying the capacities in which they are concerned with the Call-Off Contract and giving such other particulars as the Customer may reasonably request.
- B5.4 If the Provider fails to comply with clause B5.2 immediately upon request and in the reasonable opinion of the Customer, such failure may be prejudicial to the interests of the Customer, the Authority and/or the Crown, then the Customer may terminate the Call-Off Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- B5.5 The decision of the Customer as to whether any person is to be refused access to the Customer's Premises and as to whether the Provider has failed to comply with clause B5.4 shall be final and conclusive.
- B5.6 This Call-Off Contract constitutes a contract for the provision of services and not a contract of employment and accordingly, the Provider shall be fully responsible for and shall indemnify the Customer for and in respect of any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Provider or any of its Staff against

the Customer arising out of or in connection with the provision of the Services, including any claims or actions brought under the Agency Workers Regulations 2010 (SI 2010/93);

- B5.7 The Provider shall comply with its obligations in clauses 12.4 to 12.6 of the Framework Agreement in respect of its obligations to ensure that no slavery, human trafficking or forced labour are used in the Provider's operations and/or its supply chain. On request, the Provider shall provide access to any records or reports to be prepared and/or maintained by the Provider in accordance with clause 12 of the Framework Agreement.
- B5.8 The Provider shall notify the Customer as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Call-Off Contract.

B6 Key Personnel

- B6.1 The Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Customer.
- B6.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances or where the Authority has requested the removal of such Key Personnel in accordance with clause 41.6 of the Framework Agreement.
- B6.3 Any replacements to the Key Personnel shall be subject to the agreement of the Customer. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the provision of the Services.
- B6.4 The Customer shall not unreasonably withhold its agreement under clauses B6.2 or B6.3. Such agreement shall be conditional on appropriate arrangements being made by the Provider to minimise any adverse impact on the Call-Off Contract which could be caused by a change in Key Personnel.
- B6.5 The Customer may, by written notice to the Provider, ask the Provider to remove any Key Personnel from performing obligations under this Call-Off Contract, whose continued presence would, in the reasonable opinion of the Customer, be undesirable. The Provider shall promptly comply with any such request.

B7 Licence to Occupy Premises

- B7.1 Access to Premises shall be permitted on a non-exclusive licence basis free of charge and solely for the purpose of the Provider performing its obligations under the Call-Off Contract. The Provider shall vacate the Premises on completion, termination or abandonment of the Call-Off Contract.
- B7.2 The Provider shall limit access to the Premises referred to in clause B7.1 to such Staff as is necessary to enable it to perform its obligations under the Call-Off Contract and the Provider shall co-operate (and ensure that its Staff co-operate)

with such other persons working concurrently on such Premises as the Customer may reasonably request.

- B7.4 The Provider shall (and shall ensure that any Staff attending the Premises shall) observe and comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises or for the use of such Premises as determined by the Customer (or the Authority where the Authority is in control of the Premises by operation of Law), and the Provider shall pay for the cost of making good any damage caused by the Provider or its Staff other than fair wear and tear or where purposefully occurring as a result of the method of delivering the Services, by agreement between the Parties. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- B7.5 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 Provider or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Call-Off Contract, the Customer retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

B8 Property

- B8.1 All Property shall be and remain the property of the Customer (or the Authority) and the Provider irrevocably licenses the Customer and its agents to enter any premises of the Provider during normal business hours on reasonable notice to recover any such Property. The Provider shall not in any circumstances have a lien or any other interest on the Property and the Provider shall at all times possess the Property as fiduciary agent and bailee of the Customer (or the Authority). The Provider 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 Staff and 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 (or Authority).
- B8.2 The Provider shall use the Property solely in connection with the Call-Off Contract and for no other purpose without prior Approval.
- B8.3 The Provider shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Customer's reasonable security requirements as required from time to time.
- B8.4 The Provider shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear or as an agreed purposeful result of delivering the Services), unless such loss or damage was directly caused by the Customer's Default. The Provider shall inform the Customer immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

C PAYMENT AND CONTRACT PRICE

C1 Contract Price

- C1.1 In consideration of the Provider's performance of its obligations under the Call-Off Contract, the Customer shall pay the Contract Price in accordance with clause C2 (Payment and VAT).
- C1.2 For Lots 3 to 5, where members of the Provider's Staff are quarantined in accordance with the Authority or the Customer's instructions following attendance at the Premises, the Provider shall be paid the agreed Quarantine Fee in respect of the time spent in quarantine by the Provider's Staff as set out in the Specification and/or Order Form.
- C1.3 The Customer shall, where applicable and in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Call-Off Contract.

C2 Payment and VAT

- C2.1 The Provider shall submit a Valid Invoice to the Customer at the periods specified in paragraphs 19.1 (in respect of Lots 1, 3, 4 and 5) and 19.2 (in respect of Lot 2) of the Specification or, if different, as specified by the Customer in the Order Form. A Valid Invoice must contain the reference number of the relevant Order.
- C2.2 The Customer shall, in addition to the Contract Price and following Receipt of a Valid Invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Call-Off Contract.
- C2.3 The Provider shall add VAT to the Contract Price at the prevailing rate as applicable and shall show the amount of VAT payable separately on all invoices as an extra charge. If the Provider fails to show VAT on an invoice, the Customer will not, at any later date, be liable to pay the Provider any additional VAT.
- C2.4 All Provider invoices shall be expressed in sterling or such other currency as shall be permitted by the Customer in writing.
- C2.4 The Valid Invoices submitted in accordance with clause C2.1 above (and checked and signed by Provider's Representative as being accurate and complete) shall, where required by the Customer, be accompanied by supporting timesheets and any other supporting documentation requested by the Customer relating to the Services, and contain at least the following information:
 - C2.4.1 the Provider's full name, address and title of the Call-Off Contract;

- C2.4.2 identification of which Services are provided by the Provider and which are provided by Sub-Contractors;
 - C2.4.3 the address of the Premises and the date(s) on which Services were performed;
 - C2.4.4 where appropriate, the time spent working on the Premises by individual members of Staff (i.e. clocking on and off);
 - C2.4.5 where appropriate, details of journeys made and distances travelled;
 - C2.4.6 details of the type of work undertaken by individual members of Staff;
 - C2.4.7 any further specific requirements as noted at paragraph 19 of the Specification or specified in an Order Form; and
 - C2.4.7 Order number.
- C2.5 Any timesheets provided to support amounts invoiced must be signed, dated and verified by the Contract Manager or Customer/Authority supervising officer on the Premises. If properly completed and verified timesheets fully covering the work comprised in a Valid Invoice are not received along with a Valid Invoice then the Customer shall have no obligation to pay invoices to which those timesheets relate.
- C2.6 The Customer shall not pay the Provider's overhead costs unless specifically agreed in writing by the Customer and overhead costs shall include, without limitation; facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Services.
- C2.7 No payment will be chargeable to or payable by the Customer in respect of any plant or equipment which is stood down during any notice period pursuant to clause H1, H2, H3 and/or H4 and the Provider shall be under a duty to mitigate such costs as far as is reasonably possible e.g. by reutilising Staff, Provider Equipment, plant, materials and services on other current or forthcoming applications or projects.
- C2.8 In submitting any Valid Invoice for payment, the Provider, if registered for VAT, shall produce valid VAT invoices and the Customer shall have no obligation to pay any claimed sums which are not supported by a VAT invoice from the Provider. Only the Provider's Valid Invoices may be submitted for payment, no invoices from any other party will be payable by the Customer. Where different rates of VAT apply to the Services then the Provider shall submit a separate invoice in respect of each of the Services which attract different VAT rates.
- C2.10 Where the Customer, at its sole discretion, makes any payment to the Provider prior to the submission of a Valid Invoice (whether an interim payment or any other payment whatsoever) then this payment shall be on account of and deductible from the next payment to be made.
- C2.11 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice or timesheet in accordance with the requirements of this Call-Off Contract then the Customer shall be entitled to recover this payment against future

invoices raised or directly from the Provider. All payments made by the Customer to a Provider shall be on an interim basis pending final resolution of an account with the Provider in accordance with the terms of this clause C2.

- C2.12 Unless there is a genuine dispute with regard to an Invoice, the Customer shall pay all sums due to the Provider within thirty (30) calendar days of Receipt of a Valid Invoice, to be submitted in arrears.
- C2.13 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Provider interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- C2.14 Where the Provider enters into a Sub-Contract with a supplier or contractor for the purpose of performing its obligations under the Call-Off Contract, it shall ensure that a provision is included in such a Sub-Contract which requires payment to be made of all sums due by the Provider to the Sub-Contractor within a specified period not exceeding thirty (30) calendar days from the receipt of a Valid Invoice.
- C2.15 The Provider 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 Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Call-Off Contract. Any amounts due under this clause C2.15 shall be paid by the Provider to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.
- C2.15 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Call-Off Contract under clause H2.3 (Termination on Default) for failure to pay undisputed sums of money.
- C2.16 The Customer shall not pay an invoice which is not Valid Invoice.

C3 Recovery of Sums Due

- C3.1 Wherever under the Call-Off Contract any sum of money is recoverable from or payable by the Provider to the Customer (including any sum which the Provider is liable to pay to the Customer in respect of any breach of the Call-Off Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider from the Customer under the Call-Off Contract or under any other agreement or contract with the Customer or the Crown.
- C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Provider shall make all payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Provider.

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

C4 Contract Price During Extension of the Contract Period

C4.1 Subject to the Order Form and the provision in clause F6 (Variation), the Contract Price shall apply for the Contract Period and following an extension pursuant to clause F8 (Extension of Contract Period), to the date of expiry of the extended period, or such earlier date of termination or partial termination of the agreement in accordance with applicable Law or the provisions of the Call-Off Contract.

D. STATUTORY OBLIGATIONS AND REGULATIONS AND OTHER REQUIREMENTS

D1 Prevention of Bribery

D1.1 The Provider represents and warrants to the Customer that the representations and warranties in clause 8.2 of the Framework Agreement remain true and accurate for the Contract Period.

D1.2 The Provider shall not, during the Contract Period:

D1.2.1 commit a Prohibited Act; and/or

D1.2.2 do or suffer anything to be done which would cause the Customer or any of its employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

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

D1.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and

D1.3.2 keep appropriate records of its compliance with its obligations under clause D1.3.1 and make such records available to the Customer on request.

D1.4 The Provider shall immediately notify the Customer in writing if it becomes aware of any breach of the representations and warranties made in clause D1.1 and/or breach of the obligations under clause D1.2, or has reason to believe that it has or any of the Staff have:

- D1.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - D1.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - D1.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Call-Off Contract or otherwise suspects that any person directly or indirectly connected with the Call-Off Contract has committed or attempted to commit a Prohibited Act.
- D1.5 If the Provider notifies the Customer pursuant to clause D1.4, the Provider shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to Audit any books, records and/or any other relevant documentation.
- D1.6 If the Provider is in Default under clauses D1.1 and/or D1.2, the Customer may by notice:
- D1.6.1 require the Provider to remove from performance of the Call-Off Contract any Staff whose acts or omissions have caused the Default; or
 - D1.6.2 immediately terminate the Call-Off Contract.
- D1.7 Any notice served by the Customer under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Customer believes has committed the Prohibited Act and the action that the Customer has taken (including, where relevant, the date on which the Call-Off Contract shall terminate).

D2 Prevention of Fraud

- D2.1 The Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Provider (including its shareholders, members, directors) in connection with the receipt of monies from the Customer.
- D2.2 The Provider shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- D2.3 If the Provider or its Staff commits Fraud in relation to this or any other contract with the Crown (including the Customer) the Customer may:
- D2.3.1 terminate the Call-Off Contract and recover from the Provider the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; and
 - (b) recover in full from the Provider any other loss sustained by the Customer in consequence of any breach of this clause.

D3 Discrimination

- D3.1 The Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- D3.2 The Provider shall take all reasonable steps to secure the observance of clause D3.1 by all Staff.
- D3.3 The Provider shall notify the Customer immediately in writing as soon as it becomes aware of any legal proceedings threatened or issued against it by its Staff on the grounds of discrimination arising in connection with the provision of the Services under this Call-Off Contract.

D4 Environmental Requirements

- D4.1 The Provider shall in the performance of the Call-Off Contract have due regard to the Customer's Environmental, Sustainable Procurement and Ethical Procurement policies ("**Environmental Policies**") which require the Customer through its procurement and management of suppliers to:
- D4.1.1 conserve energy, water, wood, paper and other resources and reduce waste;
 - D4.1.2 phase out the use of ozone depleting substances;
 - D4.1.3 minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;
 - D4.1.4 minimise the use of products harmful to health and the environment such as hazardous substances and solvents, replacing them with more benign substances where feasible and, where such substances are necessary, to ensure that they are stored in properly labelled containers, used and disposed of in compliance with legal and regulatory requirements and any instructions from the Customer;
 - D4.1.5 reduce fuel emissions wherever possible;
 - D4.1.6 maximise the use of recovered materials in its provision of the Services under this Call-Off Contract and, if recycled materials are not suitable or not readily available, to maximise the use of materials taken from renewable sources; and
 - D4.1.7 promote the design of products that are capable of reuse or remanufacture or easily separable into recyclable parts consisting of one material (e.g. steel, plastic, textile).
- D4.2 The Provider shall ensure that any equipment and materials used in the provision of the Services do not contain:

- D4.2.1 ozone depleting substances such as hydrochlorofluorocarbons (HCFCs), halons, carbon tetrachloride, 111 trichloroethane, bromochloromethane or any other damaging substances, and/or
 - D4.2.2 HFCs and other gaseous and non – gaseous substances with a high global warming potential,
- unless given written permission by the Customer to do so.
- D4.3 The Provider shall conserve energy and water; reduce carbon emissions and other greenhouse gases; minimise the use of substances damaging or hazardous to health and the environment and reduce waste by, for example, using resources more efficiently and reusing, recycling and composting and respecting biodiversity.
 - D4.4 Where required by the Customer, the Provider shall provide the Customer with about its compliance with its obligations under clause D4.3.
 - D4.5 The Provider shall ensure that its Staff assigned to the Call-Off Contract are aware of the Customer's Environmental Policies.
 - D4.6 In relation to climate change adaptation, the Provider shall:
 - D4.6.1 identify any risks arising from climate change and variable weather such as higher temperatures, droughts, flooding, sea and river level rises, coastal and riparian erosion, water scarcity, and loss of water quality which may disrupt and/or affect the supply of Services to the Customer under this Call-Off Contract; and
 - D4.6.2 where such risks have been identified, enhance the resilience of its organisation to enable it to adapt and deal with the effects of such extreme events, including by having the necessary awareness-raising, evaluation, preventive, preparatory, recovery measures and support systems in place in order to minimise any disruption to the supply of Services under this Call-Off Contract.

D5 Health and Safety

- D5.1 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Law 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 Call-Off Contract, and the Provider shall conduct any necessary risk assessments or control measures as appropriate in respect of Staff attending the Premises.
- D5.2 While on the Premises, the Provider shall comply with any health and safety measures implemented by the Customer (or the Authority) in respect of Staff and other persons working there. This shall not limit the Provider's responsibility in respect of its obligations in clause D5.1 and the Provider shall liaise with the Customer (or Authority) representative on the Premises to ensure consistency in health and safety measures and procedures.

- D5.3 The Provider shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Call-Off Contract. The Customer shall promptly notify the Provider of any health and safety hazards which may exist or arise at the Premises and which may affect the Provider in the performance of its obligations under the Call-Off Contract.
- D5.4 The Provider shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Call-Off Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- D5.5 The Provider 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.
- D5.7 The obligations in this clause D5 are subject to any additional obligations in respect of health and safety in the Specification or set out in the Order Form.

E PROTECTION OF INFORMATION

E1 Customer Data

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

- E1.7.2 itself restore or procure the restoration of Customer Data, and shall be repaid by the Provider any reasonable expenses incurred in doing so.
- E1.8 If at any time the Provider suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Provider shall notify the Customer immediately and inform the Customer of the remedial action the Provider proposes to take.

E2 Data Protection

- E2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation:
- E2.1.1 the Customer is the Controller and the Provider is the Processor of the Personal Data specified in Schedule 7 and/or as more particularly specified in an Order Form; and
- E2.1.2 the Parties may provide each other with Personal Data relating to persons employed by them and their agents, suppliers and Sub-Contractors for purposes of administering the Call-Off Contract and each Party will be an independent Controller of such Personal Data (because the Parties each, independently of each other, determine the means and purposes of processing such Personal Data).
- E2.2 Both Parties will duly observe all their obligations under the Data Protection Legislation which arise in connection with the Call-Off Contract.
- E2.3 Each Party will, prior to providing Personal Data of which it is the Controller to the other, be responsible for ensuring the Data Subject has received adequate privacy information in accordance with GDPR Article 13 to enable the receiving Party to process the Personal Data as permitted under clause E2.4 or E2.5 (as applicable).
- E2.4 The only processing of Personal Data specified in E2.1.1 that the Provider is authorised to do is listed in Schedule 7 (and/or as more particularly specified in an Order Form) by the Customer and may not be determined by the Provider. The Provider shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- E2.5 The only processing of Personal Data specified in clause E2.1.2 that the Parties are authorised to do is processing for purposes administration of the Call-Off Contract.
- E2.6 The Provider shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- E2.6.1 a systematic description of the envisaged processing operations and the purpose of the processing;
- E2.6.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

E2.6.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

E2.6.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

E2.7 The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Call-Off Contract:

E2.7.1 process that Personal Data only in accordance with Schedule 7 (and/or as more particularly specified in an Order Form) unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;

E2.7.2 ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Customer may reasonably reject (but failure to reject shall not amount to approval by the Customer of the adequacy of the Protective Measures), having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

E2.7.3 ensure that:

- (i) the Staff do not process Personal Data except in accordance with this Call-Off Contract (and in particular Schedule 7 (and/or as more particularly specified in an Order Form));
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Provider's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

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

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

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

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

- E2.8.1 receives a Data Subject Request (or purported Data Subject Request);
- E2.8.2 receives a request to rectify, block or erase any Personal Data;
- E2.8.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- E2.8.4 receives any communication from the Information Commissioner or any other regulatory authority;
- E2.8.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

E2.8.6 becomes aware of a Data Loss Event.

E2.9 The Provider's obligation to notify under clause E2.8 shall include the provision of further information to the Customer in phases, as details become available.

E2.10 Taking into account the nature of the processing, the Provider shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Call-Off Contract and any complaint, communication or request made under Clause E2.8 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

- E2.10.1 the Customer with full details and copies of the complaint, communication or request;

- E2.10.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - E2.10.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - E2.10.4 assistance as requested by the Customer following any Data Loss Event;
 - E2.10.5 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- E2.11 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:
- E2.11.1 the Customer determines that the processing is not occasional;
 - E2.11.2 the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - E2.11.3 the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- E2.12 The Provider shall allow for audits of its Personal Data processing activity by the Customer or the Customer's designated auditor.
- E2.13 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- E2.14 Before allowing any Sub-processor to process any Personal Data related to this Call-Off Contract, the Provider must:
- E2.14.1 notify the Customer in writing of the intended Sub-processor and processing;
 - E2.14.2 obtain the written consent of the Customer;
 - E2.14.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause E2 such that they apply to the Sub-processor; and
 - E2.14.4 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- E2.15 The Provider shall remain fully liable for all acts or omissions of any of its Sub-processors.
- E2.16 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard

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

E2.17 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Officer.

E2.18 This clause E2 shall apply during the Contract Period and indefinitely after its expiry.

E3 Security (including IT Security):

E3.1 The Provider shall comply with all security requirements specified in the Specification and all security requirements notified by the Customer relating to the Premises, and shall ensure that all Staff comply with such requirements.

E3.2 The Provider shall be responsible for the security of the Provider System and shall at all times provide a level of security which:

- (a) is in accordance with Good Industry Practice and Law;
- (b) complies with HMG Security Policy Framework; and
- (c) meets any specific security threats to the Provider System.

E3.3 The Customer shall provide to the Provider upon request copies of its written security procedures.

E3.4 The Provider shall, as an enduring obligation throughout the Call-Off Contract, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

E3.5 Notwithstanding clause E3.4, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency.

E3.6 Any cost arising out of the actions of the Parties taken in compliance with clause E3.5 shall be borne by the Parties as follows:

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

E4 Confidential Information

E4.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Call-Off Contract, the Provider shall treat all Confidential

Information supplied by, concerning, belonging or relating to the Customer as confidential and shall not disclose any such Confidential Information to any other person without the prior written consent of the Customer, except to such persons and to such extent as may be necessary for the performance of the Provider's obligations under the Framework Agreement or the Call-Off Contract.

- E4.2 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Framework Agreement or the Call-Off Contract, the Customer shall treat all Confidential Information of the Provider as confidential and shall not disclose any such Confidential Information to any other person without the prior written consent of the Provider, except to such persons and to such extent as may be necessary for the performance of the Customer's obligations under the Framework Agreement or the Call-Off Contract.
- E4.3 Where required by the Customer, the Provider shall ensure that Staff, Sub-Contractors, professional advisors and consultants sign a non-disclosure agreement in substantially the form attached in Schedule 10 of the Framework Agreement prior to commencing any work in connection with the Call-Off Contract. The Provider shall maintain a list of the non-disclosure agreements completed in accordance with this clause (and/or the corresponding provisions of clause 16.3 of the Framework Agreement to the extent they relate to the Services under this Call-Off Contract). Where requested by the Customer, the Provider shall provide the Customer with a copy of the list and, subsequently upon request by the Customer, copies of such of the listed non-disclosure agreements as required by the Customer. The Provider shall ensure that its Staff, Sub-Contractors, professional advisors and consultants are aware of the Provider's confidentiality obligations under the Framework Agreement.
- E4.4 The Provider may only disclose the Customer's Confidential Information to such Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- E4.5 The Provider shall not, and shall procure that the Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of the Framework Agreement or the Call-Off Contract.
- E4.6 Clause E4.1 and E4.2 shall not apply to the extent that:
- E4.1.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;
 - E4.1.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - E4.1.3 such information was obtained from a third party without obligation of confidentiality;

- E4.1.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Framework Agreement or the Call-Off Contract; or
 - E4.1.5 it is independently developed without access to the other Party's Confidential Information.
- E4.7 Nothing in clauses E4.1 and E4.2 shall prevent the Customer disclosing any Confidential Information obtained from the Provider:
- E4.7.1 for the purpose of the examination and certification of the Customer's accounts; or
 - E4.7.2 for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
 - E4.7.3 to the Authority, any government department, Crown Body or any Contracting Body and the Provider hereby acknowledges that the Authority, all government departments, Crown Bodies or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments, Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department, the Crown or any Contracting Body; or
 - E4.7.4 to any consultant, contractor or other person engaged by the Customer,
- provided that in disclosing information under sub-clauses E4.7.3 and E4.7.4 the Customer discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- E4.8 Nothing in clauses E4.1 or E4.2 of this Call-Off Contract shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Call-Off Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- E4.9 The Customer shall use all reasonable endeavours to ensure that any government department, Crown Body, Contracting Body, employee, third party or Sub-Contractor to whom the Provider's Confidential Information is disclosed pursuant to clause E4 is made aware of the Customer's obligations of confidentiality.
- E4.10 In the event that the Provider fails to comply with clauses E4.1 to E4.5, the Customer reserves the right to terminate the Call-Off Contract with immediate effect by notice in writing. The Customer reserves the right to terminate or suspend the Call-Off Contract in the event that the Provider or its Staff or Sub-Contractors fail to comply with this clause E4. A suspension notice given to a Provider pursuant to clause E4 must specify the period of suspension.

- E4.11 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services under the Call-Off Contract, the Provider undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice and complies with the HMG Security Policy Framework.
- E4.12 The Provider will immediately notify the Customer of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services (including the Customer Data) under the Call-Off Contract and will keep a record of such breaches. The Provider will use its best endeavours to recover such Confidential Information or data (including Customer Data) however it may be recorded. This obligation is in addition to the Provider's obligations under clauses E4.1 to E4.5. The Provider will co-operate with the Customer in any investigation that the Customer considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- E4.13 The Provider shall, at its own expense, alter any security systems at any time during the Contract Period at the Customer's request if the Customer reasonably believes the Provider has failed to comply with clause E4.11.
- E4.14 All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Customer and notified to the Customer, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
- E4.15 In the event that the Provider fails to comply with clause E4.1, the Provider agrees that monetary damages would not be a sufficient remedy for breach of clause E4.1 and that the Customer shall be entitled, without prejudice to any other rights or remedies that may be available, to seek injunctive relief without proof of special damages, or any other equitable relief or remedy for any threatened or actual breach of clause E4.1.
- E4.16 The Provider hereby gives its consent for the Authority to publish the whole of this Call-Off Contract (subject to any redactions which the Customer considers appropriate applying the principles for withholding disclosure under clause E5.3 below) including from time to time agreed changes to the Call-Off Contract, to the general public.

E5 Freedom Of Information

- E5.1 The Provider acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- E5.2 The Provider shall and shall procure that any Sub-Contractor shall transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information:
- E5.2.1 provide the Customer with a copy of all Information in its possession or power in the form that the Customer requires within five (5) Working

Days (or such other period as the Customer may specify) of the Customer's request; and

- E5.2.2 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA and/or regulation 5 of the Environmental Information Regulations.
- E5.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Call-Off Contract or any other agreement whether any Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Information Regulations.
- E5.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Customer.
- E5.5 The Provider acknowledges that (notwithstanding the provisions of clause E4 (Confidential Information)) the Customer may be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Provider or the Services in certain circumstances:
 - E5.5.1 without consulting the Provider; or
 - E5.5.2 following consultation with the Provider and having taken its views into account;provided always that where clause E5.5.1 applies the Customer shall, in accordance with any recommendations of the Codes of Practice under the FOIA or the Environmental Information Regulations, take reasonable steps, where appropriate, to give the Provider advance notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- E5.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.
- E5.7 The Provider acknowledges that identifying Information as being Commercially Sensitive Information is of indicative value only and that the Customer may be obliged to disclose it in accordance with this clause E5.
- E5.8 The Customer shall not be liable for any loss, damage, harm or other detriment suffered by the Provider arising from the disclosure of any Information falling within the scope of the FOIA and/or the Environmental Information Regulations (including Commercially Sensitive Information).

E6 Publicity, Media and Official Enquiries

- E6.1 The Provider shall not and shall procure that the Staff shall not wilfully and in breach of any obligation under this Call-Off Contract, do anything which may damage the reputation of the Customer in any way or bring the Customer into disrepute. In particular, the Provider acknowledges the sensitivity of certain aspects of the

Services and shall comply with the Customer and/or Authority's instructions regarding any restrictions on communications in connection with the Services.

E6.2 The Provider shall not and shall procure that the Staff shall not, without the prior Approval of the Customer, which Approval shall not be unreasonably withheld or delayed:

E6.2.1 publish or broadcast, including through interviews with the media, use of social media and other communications with third parties, any details of:

(a) the Services provided to the Customer; and/or

(b) the AP;

E.6.2.2 use the Customer's name or brand in any promotion or marketing, including on its own website, or announcement of orders;

E6.2.3 make any press announcements or publicise this Call-Off Contract or its contents in any way.

E6.3 The Provider agrees and acknowledges that nothing in this Call-Off Contract either expressly or by implication constitutes an endorsement of any products or services of the Provider by the Customer and the Provider shall not (and shall procure that the Staff do not) conduct itself in such a way as to imply or express any such approval or endorsement.

E6.4 The Provider agrees that monetary damages would not be a sufficient remedy for breach of clauses E6.1 to E6.3 and that the Customer shall be entitled, without prejudice to any other rights or remedies that may be available, to seek injunctive relief without proof of special damages, or any other equitable relief or remedy for any threatened or actual breach of such clauses.

E6.5 The Provider shall at all times during the Contract Period on written demand indemnify the Customer and keep the Customer fully indemnified against all losses, incurred by, awarded against or agreed to be paid by the Provider arising out of any claim or infringement or alleged infringement resulting from the Provider's unauthorised use of the Customer's name or logo.

E7 Intellectual Property Rights

E7.1 As between the Parties, ownership of any and all Intellectual Property Rights in any Customer Data and any and all Intellectual Property Rights in guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs images, videos or other material which is:

E7.1.1 furnished to or made available to the Provider by or on behalf of the Customer;

E7.1.2 prepared by or for the Provider on behalf of the Customer for use, or intended use, in relation to the performance by the Provider of its obligations under this Call-Off Contract; or

- E7.1.3 the result of any work done by the Provider, the Staff or any Sub-Contractor in relation to the provision of the Services including any images and videos prepared in accordance with the Specifications (together with E7.1.1 and E7.1.2 above, the "**IP Materials**"),
- shall vest in the Customer (or, as to copyright or database rights, where the Customer is a Crown Body, ownership shall vest in the Crown) and the Provider shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without prior Approval save to the extent necessary for performance by the Provider of its obligations under the Framework Agreement or the Call-Off Contract.
- E7.2 The Provider hereby assigns to the Customer (or the Crown as to copyright and database rights where the Customer is a Crown Body), with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause E7.1.2 and E7.1.3. This assignment shall take effect on the date of the Call-Off Contract or (in the case of rights arising after the date of the Call-Off Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Provider. The Provider shall execute all documentation and do all acts as are necessary to execute this assignment.
- E7.3 The Provider shall waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Call-Off Contract or the performance of its obligations under the Framework Agreement or the Call-Off Contract.
- E7.4 The Provider shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Call-Off Contract grants to the Customer a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Customer an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same manner. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Customer to sub-license, transfer, novate or assign to other Contracting Authorities, Crown Bodies, a Replacement Provider or to any other third party supplying Services to the Customer.
- E7.5 The Provider shall not infringe any Intellectual Property Rights of any third party in supplying the Services and/or performing its obligations under this Call-Off Contract and the Provider shall, during and after the Contract Period, indemnify and keep indemnified and hold the Customer and where the Customer is a Crown Body, the Crown harmless from and against any and all losses, charges, damages, costs and expenses and other liabilities which the Customer or the Crown may suffer or incur as a result of a Third Party IP Claim or in connection with any breach of this clause E7.5, except to the extent that any such claim results directly from:
- E7.5.1 items or materials based upon designs supplied by the Customer; or
- E7.5.2 the use of Customer Data which is not required to be verified by the Provider under the Call-Off Contract.

- E7.6 The Customer shall notify the Provider in writing of any claim or demand brought against the Customer for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Provider to the Customer.
- E7.7 The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any Third Party IP Claim, provided that the Provider shall at all times:
- E7.7.1 consult the Customer on all material issues which arise during the conduct of such litigation and negotiations;
 - E7.7.2 take due and proper account of the interests of the Customer; and
 - E7.7.3 not settle or compromise any claim without prior Approval of the Customer (not to be unreasonably withheld or delayed).
- E7.8 The Customer shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Provider shall indemnify the Customer for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Provider shall not be required to indemnify the Customer under this clause E7.8 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clause E7.5.1 or E7.5.2.
- E7.9 The Customer shall not make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.
- E7.10 If any Third Party IP Claim is made or in the reasonable opinion of the Provider is likely to be made, the Provider shall notify the Customer and, at its own expense and subject to the Approval of the Customer (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Customer under clause G2.1.7 (Warranties and Representations)) use its best endeavours to:
- E7.10.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or
 - E7.10.2 procure a licence to use the Intellectual Property Right(s) and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Customer,
- and in the event that the Provider is unable to comply with this clause E7.10 within twenty (20) Working Days of receipt by the Customer of the Provider's notification the Customer may terminate the Call-Off Contract with immediate effect by notice in writing.
- E7.11 The Provider grants to the Customer a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Provider owned or developed prior to the Commencement Date and which

the Customer reasonably requires in order to exercise its rights under, and receive the benefit of, the Call-Off Contract (including, without limitation, the Services).

E8 Audit

- E8.1 In addition to any specific record-keeping obligations set out in the Specification, the Provider shall keep and maintain until six (6) years after the end of the term of the Call-Off Contract, or such other period as may be agreed between the parties, full and accurate records of the Call-Off Contract including the Services supplied under it, all expenditure reimbursed by the Customer, and all payments made by the Customer. The Provider shall on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Call-Off Contract.
- E8.2 The Provider agrees to make available to the Customer, free of charge, whenever requested, copies of audit reports obtained by the Provider in relation to the Services.
- E8.3 The Provider shall permit duly authorised representatives of the Customer and/or the National Audit Office to examine the Provider's records and documents relating to the Services and to provide such copies and oral or written explanations as may reasonably be required.
- E8.4 The Provider (and its agents and Sub-Contractors) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Customer and for carrying out examinations into the economy, efficiency and effectiveness with which the Customer has used its resources. The Provider shall provide such explanations as are reasonably required for these purposes.

E9 Official Secrets Act and Finance Act

- E9.1 The Provider shall comply with, and shall ensure that its Staff and Sub-Contractors comply with, the provisions of:
- E9.1.1 the Official Secrets Acts 1911 to 1989; and
- E9.1.2 Section 182 of the Finance Act 1989.
- E9.2 In the event that the Provider or its Staff or Sub-Contractors fail to comply with this clause E9.1, the Customer reserves the right to terminate or suspend the Call-Off Contract by giving notice in writing to the Provider.
- E9.3 A suspension notice given to the Provider pursuant to clause E9.2 must specify the period of suspension.

E10 Tax Compliance

- E10.1 If, during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Provider shall:

- E10.1.1 notify the Customer in writing of such fact within 5 Working Days of its occurrence; and
- E10.1.2 promptly give the Customer:
 - (a) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.
- E10.2 If the Provider or any Staff are liable to be taxed in the UK or to pay National Insurance Contributions (“**NICs**”) in respect of consideration received under the Call-Off Contract, the Provider shall:
 - E10.2.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all Laws relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other Laws relating to NICs, in respect of that consideration; and
 - E10.2.2 indemnify the Customer against any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Provider or any Staff.

F. CONTROL OF THE CONTRACT

F1 Failure to meet Requirements

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

F2 Monitoring of Contract Performance

- F2.1 The Provider shall immediately inform the Customer if any aspect of the Call-Off Contract is not being or is unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.
- F2.2 In addition to any contract management provisions in Appendix D to the Specification, at or around six (6) Months from the Commencement Date and each anniversary of the Commencement Date thereafter (each being a “**Review Date**”), the Customer may carry out a review of the performance of the Provider (“**Checkpoint Review**”) in respect of this Call-Off Contract. Without prejudice to the generality of the foregoing, the Customer may in respect of the period under

review consider such items as (but not limited to): the Provider's performance in respect of the Services supplied under the Call-Off Contract; the Provider's contribution to innovation; whether the Services provide the Customer with best value for money; consideration of any changes which may need to be made to the Services; a review of future requirements in relation to the Services and progress against key milestones.

- F2.3 The Provider shall provide at its own cost any assistance reasonably required by the Customer to perform such Checkpoint Review including the provision of data and information.
- F2.4 The Customer may (at its absolute discretion) produce a report (a "**Checkpoint Review Report**") of the results of each Checkpoint Review stating any areas of exceptional performance and areas for improvement in the provision of the Services and where there is any shortfall in any aspect of performance reviewed as against the Customer's expectations and the Provider's obligations under this Call-Off Contract.
- F2.5 The Customer shall provide the Provider with a copy of the Checkpoint Review Report (if applicable) for any comments the Provider may have. The Customer shall consider such comments and at its absolute discretion produce a revised Checkpoint Review Report.
- F2.6 The Provider shall, within ten (10) Working Days of receipt of the Checkpoint Review Report (revised as appropriate) provide the Customer with a plan to address resolution of any shortcomings and implementation of improvements identified by the Checkpoint Review Report.
- F2.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Provider's failure to meet its obligations under this Call-Off Contract identified by the Checkpoint Review Report, or those which result from the Provider's failure to meet the Customer's expectations notified to the Provider or of which the Provider ought reasonably to have been aware) shall be implemented at no extra charge to the Customer.

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

- F3.1 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 Provider's obligations under the Call-Off Contract, then the Customer shall notify the Provider, and where considered appropriate by the Customer, investigate the complaint. The Customer may, in its sole discretion, uphold the complaint and take further action in accordance with the Performance Management Framework at Appendix C to the Specification and/or clause H2 (Termination on Default) of the Call-Off Contract.
- F3.2 In the event that the Customer is of the reasonable opinion that there has been a material breach of the Call-Off Contract by the Provider, then the Customer may, without prejudice to its rights to terminate the Call-Off Contract under clause H2 (Termination on Default), do any of the following:

- F3.2.1 without terminating the Call-Off Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Customer that the Provider will once more be able to supply all or such part of the Services in accordance with the Call-Off Contract;
 - F3.2.2 without terminating the whole of the Call-Off Contract, terminate the Call-Off Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
 - F3.2.3 set off any liability of the Customer to the Provider, against any liability of the Customer to the Provider, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Call- Off Contract or another contract; and/or
 - F3.2.4 withhold or reduce payments to the Provider in accordance with the Performance Management Framework at Appendix C to the Specification.
- F3.3 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Customer may charge the Provider for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services.
- F3.4 Where in the opinion of the Customer the Provider has failed to supply all or any part of the Services in accordance with the Call-Off Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Customer may give the Provider written notice specifying the way in which its performance falls short of the requirements of the Call-Off Contract, or is otherwise unsatisfactory.
- F3.5 Where the Provider has been notified of a failure in accordance with Clause F3.4 the Customer may:
 - F3.5.1 direct the Provider, to investigate, identify and remedy the failure within such time as may be specified by the Customer and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Customer within the specified timescale; and/or
 - F3.5.2 withhold or reduce payments to the Provider, in accordance with the Performance Management Framework at Appendix C to the Specification.
- F3.6 Where the Provider has been notified of a failure in accordance with Clause F3.4, the Provider shall:

- F3.6.1 use all reasonable endeavours to immediately minimise the impact of such failure(s) to the Customer and to prevent such failure(s) from recurring; and
 - F3.6.2 immediately provide the Customer with such information as the Customer may request regarding what measures are being taken to comply with the obligations in this clause and the progress of those measures until resolved to the satisfaction of the Customer.
- F3.7 If, having been notified of any failure, the Provider fails to remedy it in accordance with Clause F3.6 within the time specified by the Customer, the Customer may treat the continuing failure as a material breach of the Call-Off Contract and may terminate the Call-Off Contract in accordance with clause H2 (Termination on Default).

F4 Transfer and Sub-Contracting

- F4.1 Except where clauses F4.5 and F4.6 both apply, the Provider shall not transfer, charge, assign, sub-contract or in any other way dispose of the Call-Off Contract or any part of it without the prior Approval of the Customer. All such documents shall be evidenced in writing and shown to the Customer on request. Sub-contracting any part of the Call-Off Contract shall not relieve the Provider of any of its obligations or duties under the Call-Off Contract.
- F4.2 Any Sub-contractor arrangements shall be in accordance with the requirements of paragraph 4.7 to 4.11 of the Specification. Where appropriate, the Provider shall provide each Sub-Contractor with a copy of the Call-Off Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Call-Off Contract. The Provider shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own.
- F4.3 The Provider shall ensure that all its Sub-Contractors and suppliers retain each record, item of data and document relating to the Services for a period of not less than six (6) years from the end of the term of the Call-Off Contract, and shall make them available to the Customer on request in accordance with the provisions of clause E8 (Audit). Should any Sub-Contractor or supplier refuse to permit the Customer to access the required records then the Customer shall have no obligation to pay any claim or invoice made by the Provider on the basis of such documents or work carried out by the Sub-Contractor or supplier.
- F4.4 Where the Customer has consented to the placing of Sub-Contracts, the Provider shall notify the Customer the name(s), contact details and legal representatives of the Sub-Contractor(s) and copies of each Sub-Contract shall, at the request of the Customer, be sent by the Provider to the Customer promptly on request.
- F4.5 If the Customer believes there are:
 - F4.5.1 compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Public Contracts Regulations, the Provider shall replace or not appoint the Sub-Contractor; or
 - F4.5.2 non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Public Contracts Regulations, the Customer may

require the Provider to replace or not appoint the Sub-Contractor and the Provider shall promptly comply with such requirement.

F4.6 Notwithstanding clause F4.1, the Provider may assign to a third party (“**the Assignee**”) the right to receive payment of the Contract Price or any part thereof due to the Provider under this Call-Off Contract (including any interest which the Customer incurs under clause C2 (Payment and VAT)). Any assignment under this clause F4.6 shall be subject to:

F4.5.1 reduction of any sums in respect of which the Customer exercises its right of recovery under clause C3 (Recovery of Sums Due);

F4.5.2 all related rights of the Customer under the Call-Off Contract in relation to the recovery of sums due but unpaid; and

F4.5.3 written notification received by the Customer under both clauses F4.7 and F4.8.

F4.7 In the event that the Provider assigns the right to receive the Contract Price under clause F4.6, the Provider or the Assignee shall notify the Customer in writing of the assignment and the date upon which the assignment becomes effective.

F4.8 The Provider shall ensure that the Assignee notifies the Customer of the Assignee’s contact information and bank account details to which the Customer shall make payment.

F4.9 The provisions of clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without Approval.

F4.10 Subject to clause F4.11, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Call-Off Contract or any part thereof to:

F4.10.1 any Contracting Body; or

F4.10.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or

F4.10.3 any private sector body which substantially performs the functions of the Customer,

provided that any such assignment, novation or other disposal shall not unreasonably increase the burden of the Provider’s obligations under the Call-Off Contract.

F4.11 Any change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to clause F4.12, affect the validity of the Call-Off Contract. In such circumstances the Call-Off Contract shall bind and inure to the benefit of any successor body to the Customer.

F4.12 If the rights and obligations under the Call-Off Contract are assigned, novated or otherwise disposed of pursuant to clause F4.10 to a body which is not a Contracting Body or if there is a change in the legal status of the Customer such that it ceases

to be a Contracting Body (in the remainder of this clause both such bodies being referred to as the “**Transferee**”):

- F4.12.1 the rights of termination of the Customer in clauses H1 (Termination on Insolvency and Change of Control) and H2 (Termination on Default) shall be available to the Provider in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - F4.12.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Call-Off Contract or any part thereof with the prior consent in writing of the Provider.
- F4.13 The Customer may disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Provider’s obligations under the Call-Off Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Provider’s obligations under the Call-Off Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- F4.14 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Call-Off Contract.

F5 Waiver

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

F6 Variation

- F6.1 If, after the Commencement Date, the Customer’s requirements change, the Customer may request a Variation subject to the terms of this clause F6.
- F6.2 The Customer may request a Variation by notifying the Provider in writing of the Variation and giving the Provider sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation within a reasonable time limit specified by the Customer. If the Provider accepts the Variation it shall confirm it in writing.

F6.3 If the Provider is unable to accept the Variation or where the Parties are unable to agree a change to the Contract Price, the Customer may:

F6.3.1 allow the Provider to fulfil its obligations under the Call-Off Contract without the Variation; or

F6.3.2 terminate the Call-Off Contract immediately except where the Provider has already delivered all or part of the Services or where the Provider can show evidence of substantial work being carried out to fulfil the requirements of the Call-Off Contract; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).

F6.4 No Variation will take effect unless and until it is recorded in a validly executed CCN.

F6.6 The provisions of this clause F6 may be varied in an emergency if it is not practicable to obtain the Approvals within the time necessary to make the Variation in order to address the emergency. In an emergency, Variations may be approved by a different representative of the Customer. However, the Customer's Contract Manager shall have the right to review such a Variation and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Variation.

F7 Severability

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

F8 Extension of Contract Period

F8.1 The Customer may, by giving written notice to the Provider, extend the Call-Off Contract for a further period up to the date set out in the Order Form, provided that the maximum Contract Period does not exceed two (2) years. The provisions of the Call-Off Contract will apply throughout any such extended period.

F9 Remedies Cumulative

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

F10 Entire Agreement

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

F11 Execution of the Call-Off Contract

F11.1 This Call-Off Contract shall be formed on acceptance by the Provider of the Order Form in accordance with clause 6.4 of the Framework Agreement. Any Order Form may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

G LIABILITIES

G1 Liability, Indemnity and Insurance

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

G1.1.1 death or personal injury caused by its negligence; or

G1.1.2 Fraud or fraudulent misrepresentation;

G1.1.4 any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982;

G1.1.5 any breach of clause D1, D2, E1, E2 and E4; or

G1.1.6 any liability to the extent it cannot be limited or excluded by Law.

G1.2 Subject to clauses G1.3 and G1.4, the Provider shall indemnify the Customer and keep the Customer indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under the Call-Off Contract or the presence of the Provider or any Staff or Sub-Contractors 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 Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider, its Staff and Sub-Contractors.

G1.3 Subject to clause G1.1 the aggregate liability of either Party in respect of the Call-Off Contract shall not exceed £1 million.

G1.4 The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Call-Off Contract.

G1.5 The Customer may recover from the Provider the following losses incurred by the Customer to the extent they arise as a result of a Default by the Provider:

- G1.5.1 any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
- G1.5.2 any wasted expenditure or charges;
- G1.5.3 the additional costs of procuring a Replacement Provider for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Provider and/or replacement deliverables above those which would have been payable under the Call-Off Contract;
- G1.5.4 any compensation or interest paid to a third party by the Customer; and
- G1.5.5 any fine or penalty incurred by the Customer pursuant to Law and any costs incurred by the Customer in defending any proceedings which result in such fine or penalty.
- G1.6 Subject always to clause G1.1 and G1.5, in no event shall either Party be liable to the other for any:
 - G1.6.1 loss of profit, turnover, business opportunity, revenue or damage to goodwill (in each case whether direct or indirect); or
 - G1.6.2 loss of savings (whether anticipated or otherwise); and/or
 - G1.6.3 indirect, special or consequential loss or damage.
- G1.7 Unless otherwise specified by the Customer, the Provider shall, with effect from the Commencement Date for such period as necessary to enable the Provider to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 years following the end of the Contract.
- G1.8 The Provider shall hold employer's liability insurance in respect of Staff and such insurance shall be in accordance with any legal requirement from time to time in force.
- G1.9 The Provider shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.10 If the Provider does not give effect to and maintain the insurances required by the provisions of the Call-Off Contract the Customer may make alternative

arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

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

G1.12 The Provider shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Provider, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Provider is an insured, a co-insured or additional insured person.

G2 Warranties and Representations

G2.1 The Provider warrants and represents for the duration of the Call-Off Contract that:

G2.1.1 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 Call-Off Contract and that the Call-Off Contract is executed by a duly authorised representative of the Provider;

G2.1.2 in entering the Call-Off Contract it has not committed any Fraud;

G2.1.3 as at the Commencement Date, all information contained in its response to the Invitation to Tender or other offer made by the Provider to the Customer and/or Authority (including all representations and warranties set out in the Framework Agreement) remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Customer prior to execution of the Call-Off Contract and in addition, that it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;

G2.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Call-Off Contract;

G1.2.5 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Call-Off Contract;

G2.1.6 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 Provider 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 Provider's assets or revenue;

- G2.1.7 it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Call-Off Contract;
- G2.1.8 any person engaged by the Provider shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- G2.1.9 in the three (3) years (or period of existence where the Provider has not been in existence for three (3) years) prior to the date of the Call-Off Contract:
 - (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Call-Off Contract;
- G2.1.10 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Provider's obligations under the Call-Off Contract; and
- G2.1.11 it has, if relevant, notified the Customer in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

G3 Force Majeure

- G3.1 Subject to the remaining provisions of this clause G3, a Party may claim relief under this clause G3 from liability for failure to meet its obligations under the Call-Off Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Provider in performing its obligations under the Call-Off Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Provider.
- G3.2 The Affected Party shall as soon as reasonably practicable issue a notice which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect (a "**Force Majeure Notice**").
- G3.3 If the Provider is the Affected Party, it shall not be entitled to claim relief under this clause G3 to the extent that consequences of the relevant Force Majeure Event:

- G3.3.1 are capable of being mitigated by taking steps in accordance with clause G3.5 but the Provider has failed to do so; and/or
 - G3.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Call-Off Contract and Framework Agreement.
- G3.4 Subject to clause G3.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- G3.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Provider is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- G3.6 If, as a result of a Force Majeure Event:
 - G3.6.1 an Affected Party fails to perform its obligations in accordance with the Call-Off Contract, then during the continuance of the Force Majeure Event:
 - (a) the other Party shall not be entitled to exercise its rights to terminate the Call-Off Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
 - (b) neither Party shall be liable for any Default arising as a result of such failure;
 - G3.6.2 the Provider fails to perform its obligations in accordance with the Call-Off Contract it shall be entitled to receive payment of the Contract Price (or a proportional payment of it) only to the extent that the Services (or part thereof) continue to be performed in accordance with the terms of the Call-Off Contract during the occurrence of the Force Majeure Event.
- G3.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Call-Off Contract.
- G3.8 Relief from liability for the Affected Party under this clause G3 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and shall not be dependent on the serving of notice under clause G3.7.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

H1.1 The Customer may terminate the Call-Off Contract with immediate effect by notice in writing and without compensation to the Provider where a situation arises in respect of the Provider pursuant to which the Authority has the right to terminate the Framework Agreement pursuant to clause 22 of the Framework Agreement.

H1.2 The Provider shall notify the Customer immediately in writing of any proposal or negotiations which will or may result in a Change of Control. The Customer may terminate the Call-Off Contract with immediate effect by notice in writing and without compensation to the Provider within six (6) Months of:

H1.3.1 being notified that a Change of Control has occurred; or

H1.3.2 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 the Customer's Approval was granted prior to the Change of Control.

H2 Termination on Default

H2.1 The Customer may terminate the Call-Off Contract by written notice to the Provider with immediate effect if the Provider commits a material breach of the Call-Off Contract and:

H2.1.1 the Provider has not remedied the material breach to the satisfaction of the Customer within such period as may be specified by the Customer, after issue of a written notice specifying the material breach and requesting it to be remedied; or

H2.1.2 the material breach is not, in the opinion of the Customer, capable of remedy,

provided that, where it is not practicable for the Customer to issue a notice in writing for purposes of clause H2.1, notice may be given verbally and followed up in writing.

H2.2 For the purposes of clause H2.2, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Customer would otherwise derive from:

H2.2.1 a substantial portion of this Call-Off Contract; or

H2.2.2 obligations under clauses A7, D1, E1, E2, E3, E4, E7, E9 or E10..

- H2.3 In the event that through any Default of the Provider, data transmitted or processed in connection with the Call-Off Contract is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- H2.4 If the Customer fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Provider may terminate the Call-Off Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under clause C3.1 (Recovery of Sums Due) or a Force Majeure Event.

H3 Termination without cause

- H3.1 The Customer may terminate the Call-Off Contract without cause at any time::
- H3.1.1 by giving not less than twenty-four (24) hours' written notice to the Provider; or
- H3.1.2 in Exceptional Circumstances, immediately by giving verbal notice to the Provider.

H4 Other Termination Grounds

- H4.1 The Customer may terminate the Call-Off Contract on written notice with immediate effect to the Provider if:
- H4.1.1 the Call-Off Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Public Contracts Regulations;
- H4.1.2 the Provider was, at the time the Call-Off Contract was awarded, in one of the situations specified in regulation 57(1) of the Public Contracts Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Call-Off Contract;
- H4.1.3 the Call-Off Contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaty on European Union, Treaty of the Functioning of the European Union or the Public Contracts Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty of the Functioning of the European Union; or
- H4.1.4 the Provider has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.

H5 Consequences of Expiry or Termination

- H5.1 Where the Customer terminates the Call-Off Contract under clause H1, H2 or H4 and then makes other arrangements for the supply of Services, the Customer may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period.
- H5.2 Where the Call-Off Contract is terminated under clause H1, H2 or H4, no further payments shall be payable by the Customer to the Provider (for Services supplied by the Provider prior to termination and in accordance with the Call-Off Contract but where the payment has yet to be made by the Customer), until the Customer has established the final cost of making the other arrangements envisaged under this clause.
- H5.3 Where the Customer terminates the Call-Off Contract under clause H3, unless otherwise stated in the Specification at paragraph 5.33 to 5.36, no further payments shall be payable by the Customer to the Provider except for Services supplied by the Provider prior to termination and in accordance with the Call-Off Contract but where the payment has yet to be made by the Customer.
- H5.4 Save as otherwise expressly provided in the Call-Off Contract:
- H5.4.1 termination or expiry of the Call-Off Contract shall be without prejudice to any rights, remedies or obligations accrued under the Call-Off Contract prior to termination or expiration and nothing in the Call-Off Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
 - H5.4.2 termination of the Call-Off Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Provider under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Bribery), E2 (Data Protection), E4 (Confidential Information), E5 (Freedom of Information), E7 (Intellectual Property Rights), E8 (Audit), E9 (Official Secrets Acts and Finance Act), F9 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H6 (Consequences of Expiry or Termination), H7 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H6 Disruption

- H7.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under the Call-Off Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer and/or other persons present on the Premises.
- H6.2 The Provider shall immediately inform the Customer of any actual or potential industrial action, whether such action be by its own Staff or others, which affects or might affect its ability at any time to perform its obligations under the Call-Off Contract.
- H6.3 In the event of industrial action by the Staff, the Provider shall seek Approval of the Customer to its proposals to continue to perform its obligations under the Call-Off Contract.

- H6.4 If the Provider's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Customer acting reasonably, then the Call-Off Contract may be terminated with immediate effect by the Customer by notice in writing.
- H6.5 If the Provider is temporarily unable to fulfil the requirements of the Call-Off Contract owing to disruption of the Customer's normal business, the Provider may request a reasonable allowance of time and in addition, the Customer will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.

H7 Recovery upon Termination

- H7.1 On the termination of the Call-Off Contract for any reason, the Provider shall at its cost:
- H7.1.1 immediately return to the Customer or destroy (as directed in writing by the Customer) all Confidential Information, Customer Data, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
 - H7.1.2 immediately deliver to the Customer or destroy (as directed in writing by the Customer) all Property (including materials, documents, information and access keys) provided to the Provider. Such Property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - H7.1.3 immediately vacate the Premises (subject to compliance with all instructions of the Customer and/or Authority representative in control of the Premises);
 - H7.1.4 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Provider and/or the completion of any work in progress; and
 - H7.1.5 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 and/or for the purpose of allowing the Customer and/or the Replacement Provider to conduct due diligence.
- H7.2 If the Provider fails to comply with clause H7.1.1 and H7.1.2, the Customer may recover possession thereof and the Provider grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted suppliers or Sub-Contractors where any such items may be held.

H8 Retendering and Handover

- H8.1 Within twenty-one (21) days of being so requested by the Customer, the Provider shall provide, and thereafter keep updated, in a fully indexed and catalogued format,

all the information necessary to enable the Customer to issue tender documents for the future provision of the Services.

- H8.2 The Customer shall take all necessary precautions to ensure that the information referred to in H8.1 is given only to potential Replacement Providers who have qualified to tender for the future provision of the Services.
- H8.3 The Customer shall require that all potential Replacement Providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Customer; and that they shall not use it for any other purpose.
- H8.4 The Provider shall indemnify the Customer against any claim made against the Customer at any time by any person in respect of any liability incurred by the Customer arising from any deficiency or inaccuracy in information which the Provider is required to provide under clause H8.1.
- H8.5 The Provider shall allow access to the Premises, in the presence of a Customer representative, to any person representing any potential Replacement Provider whom the Customer has selected to tender for the future provision of the Services.
- H8.6 If access is required to the Provider's Premises for the purposes of clause H8.5, the Customer shall give the Provider five (5) Working Days' notice of a proposed visit together with a list showing the names of all persons who will be attending those premises. Their attendance shall be subject to compliance with the Provider's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- H8.7 The Provider shall co-operate fully with the Customer during the handover arising from the completion or earlier termination of the Call-Off Contract. This co-operation, during the period of the new Provider setting up operations, shall extend to allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- H8.8 Within ten (10) Working Days of being so requested by the Customer, the Provider shall transfer to the Customer, or any person designated by the Customer, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Customer.

H9 Exit Management

- H9.1 Upon termination the Provider shall render reasonable assistance to the Customer to the extent necessary to effect an orderly assumption by a Replacement Provider of the Services.
- H9.2 Where the Customer requires a continuation of all or any of the Services on expiry or termination of this Call-Off Contract, either by performing them itself or by engaging a third party to perform them, the Provider shall co-operate fully with the

Customer and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.

H9.3 The following commercial approach shall apply to the transfer of the Services:

H9.3.1 where the Provider does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Contract Price.

H9.3.2 where the Provider reasonably incurs additional costs, the Parties shall agree a Variation to the Contract Price based on the rates either set out in the Pricing Matrix in the Framework Agreement or forming the basis for the Contract Price.

H10 Knowledge Retention

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

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

I1.1 Subject to the provisions of clause I2 (Dispute Resolution), the Call-Off Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Customer to take proceedings against the Provider in any other court of competent jurisdiction, nor shall the taking of proceedings in any other court of competent jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

I2 Dispute Resolution

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

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

- 12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:
- 12.6.1 The Customer may at any time before court proceedings are commenced, serve a notice on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7.
 - 12.6.2 If the Provider intends to commence court proceedings, it shall serve written notice on the Customer of its intentions and the Customer shall have twenty-one (21) days following receipt of such notice to serve a reply on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7.
 - 12.6.3 The Provider may request by notice in writing to the Customer that any dispute be referred and resolved by arbitration in accordance with clause 12.7, to which the Customer may consent as it sees fit.
- 12.7 In the event that any arbitration proceedings are commenced pursuant to clause 12.6:
- 12.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;
 - 12.7.2 the Customer shall give a written notice of arbitration to the Provider (the “**Arbitration Notice**”) stating:
 - (a) that the dispute is referred to arbitration; and
 - (b) providing details of the issues to be resolved;
 - 12.7.5 the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7.2 shall be applied and are deemed to be incorporated by reference to the Call-Off Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - 12.7.6 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
 - 12.7.7 if the Parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Customer under clause 12.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
 - 12.7.8 the arbitration proceedings shall take place in London and in the English language; and
 - 12.7.9 the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

FRAMEWORK AGREEMENT SCHEDULE 6

ORDER FORM

The template Order Form for Lot 1 is included as Annex 3 to the Specification of Requirements within the Bravo contract record.

The template Order Form for Lots 3 and 4 is included as Annex 4 to the Specification of Requirements within the Bravo contract record.

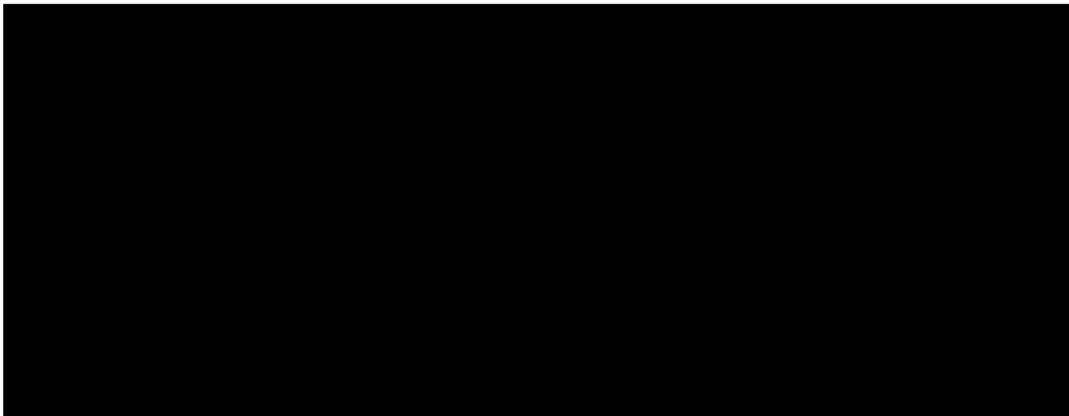
FRAMEWORK AGREEMENT SCHEDULE 7

PROCESSING, PERSONAL DATA AND DATA

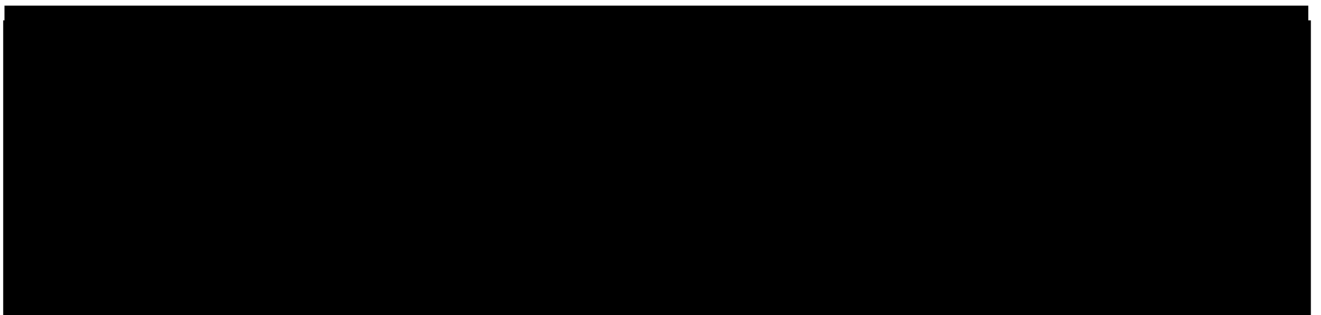
SUBJECTS

1. This Schedule shall be completed by the Authority or, in respect of any Call-Off Contract, the Customer, who may take account of the view of the Provider, however the final decision as to the content of this Schedule shall be with the Authority (or in respect of any Call-Off Contract the Customer), at its absolute discretion.

2. The contact details of the Authority Data Protection Officer are:



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



4. If a Call-Off Contract involves Personal Data processing that differs from the instructions given in the table below, a Customer may include such specific instructions in an Order Form and such instructions shall apply in respect of that Call-Off Contract.

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

Data Processing descriptor	Narrative
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority and/or Customer is the Controller and the Provider is the Processor in accordance with clause 18 of the Framework Agreement and clause E2.1 of the Call-Off Contract.
Subject matter of the processing	To enable the effective provision of the following services: 1. Lot 2: Carcase Collection Services
Duration of the processing	Personal Data will be processed only for as long as necessary for provision of the Services and for no longer than expiry of the Framework Term or, if longer, expiry of the Call-Off Contract in connection with which it is processed.
Nature and purposes of the processing	Processing will involve organising on farm kill and Carcase Collection Services at specific locations across England, Wales and Scotland. Lot 2 will involve contacting the Keeper to arrange a suitable pick up time and date and delivering the Carcase to the arranged location in line with the Order.
Type of Personal Data	Names, telephone and address information of Keeper; animal ID information and details of PME Provider Staff.
Categories of Data Subject	Keeper, PME Provider Staff
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Personal Data is to be securely destroyed when no longer required for purposes of the Framework Agreement and any Call-Off Contract and no later than 6 years after the end of the Term of the Framework Agreement.

FRAMEWORK AGREEMENT SCHEDULE 8

BUSINESS CONTINUITY AND DISASTER RECOVERY

- 1 For the purposes of this Schedule 8, “**BCDR Plan**” means the Provider’s business continuity and disaster recovery plan, as may be amended from time to time.
- 2 The Provider shall develop, review, test, change, and maintain a BCDR Plan during the term of the Framework Agreement for use in the event of a disaster or other event (or combination of events) that might result in the loss or partial loss of availability of Services.
- 3 The purpose of the BCDR Plan shall be to ensure that, in the event of a disruption, howsoever caused, the Authority or Contracting Body is able to maintain continuance of the Services. The BCDR Plan shall cater for any failure or disruption and shall address the various possible levels of failure or disruption (that is, from minimal failure through to total failure).
- 4 The BCDR Plan shall detail the processes and arrangements which the Provider shall follow to ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services and the recovery of the Services in the event of a disaster or other event (or combination of events) that might result in the loss or partial loss of availability of Services.
- 5 The Provider shall provide a copy of their BCDR Plan to the Authority or Contracting Body on request and provide details of any reviews, testing and updates taking place during the Framework Term.
- 6 In the event of a disaster or other event (or combination of events) that might result in the loss or partial loss of availability of Services, the Provider shall immediately invoke the BCDR Plan (and shall inform the Authority and any Contracting Body promptly of such invocation).

FRAMEWORK AGREEMENT SCHEDULE 9

CHANGE CONTROL NOTICE

Contract/Framework Agreement Change Note “CCN”

Contract/Framework Agreement Change Note Number	
Contract/Framework Agreement Reference Number & Title	
Variation Title	
Number of Pages	

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

IT IS AGREED as follows

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

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

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

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

Name	
Title	
Signature	
Date	

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

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

FRAMEWORK AGREEMENT SCHEDULE 10

NON-DISCLOSURE AGREEMENT

THIS NON DISCLOSURE AGREEMENT is made the [insert] day of [insert month and year] (the “**Commencement Date**”)

BETWEEN:

- (1) [Insert full name of Provider] of [insert full address but if registered company please insert the following - (registered in England and Wales under number [insert company number])] whose registered office is situated at [] (the “**Provider**”);
- (2) [Insert name and address of the Staff member, professional advisor or consultant of the Provider] (the “**Recipient**”).

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

WHEREAS:

- (A) The Provider has contracted with the Secretary of State for Environment, Food and Rural Affairs (the “**Authority**”) to provide Services to the Authority and other contracting bodies pursuant to a framework agreement dated [insert date] (“**Framework Agreement**”).
- [(B) Contracting bodies may order Services pursuant to the Framework Agreement by entering into a Call-Off Contract with the Provider (each such contracting body a “**Customer**”).
- (C) The Framework Agreement and Call-Off Contracts impose obligations of confidentiality on the Provider. The Recipient is an [insert employee, sub-contractor, professional advisor or consultant] of the Provider engaged in the provision of certain services to the Authority in support of or in connection with the Services to be provided by the Provider under the Framework Agreement and Call-Off Contracts.
- (D) The Recipient may therefore, have communicated to it, certain Confidential Information belonging to the Authority or Customers which is proprietary and must be held in confidence. Accordingly, the Framework Agreement and Call-Off Contract require the Provider to ensure that the Recipient enters into a non-disclosure agreement with the Provider on the terms and conditions set out herein.
- (E) Any Confidential Information disclosed by the Authority, a Customer or the Provider to the Recipient, whether contained in original or copy documents, will at all times remain the property of the Authority or a Customer together with all notes, memoranda and drawings that have been made as a result of access to such Confidential Information.

NOW IT IS AGREED as follows:

Definition and Interpretation

1. In this Agreement:

a) **“Confidential Information”** means: any information which has been designated as confidential by the Authority or a Customer in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) whether commercial, financial, technical or otherwise including (without limitation) information belonging to or in respect of the Authority or a Customer which relates to research, development, trade secrets, formulae, processes, designs, specifications, Authority or Customer data, internal management, information technology and infrastructure and requirements, price lists and lists of, and information about, customers and employees, all materials and information belonging to third parties in respect of which the Recipient owes obligations of confidence; information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, intellectual property rights or know-how of the Authority or Customer and all Personal Data; whether or not that information is marked or designated as confidential or proprietary; whether arising prior to, on or after the Commencement Date;

b) **“Law”** means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body of which the Provider is bound to comply.

2. In construing this Agreement the general words introduced or followed by the word include(s) or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
3. Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.
4. Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.
5. References to any person shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, government department, agency, or any association or partnership (whether or not having a separate legal personality).

CONFIDENTIALITY

6. The Recipient undertakes to hold in confidence all Confidential Information and safeguard it accordingly; and that any Confidential Information supplied will not be used by it for any purpose other than in connection with the Provider's delivery of the Services under the Framework Agreement and Call-Off Contracts without the prior written permission of the Authority or a customer.

7. The Recipient will take all necessary precautions to ensure that the Confidential Information is held in confidence and will provide proper and secure storage for all information and any papers, drawings or other materials which relate to or are compiled from such information.
8. The Recipient shall, with respect to any Confidential Information it receives directly from or on behalf of the Authority or a Customer or from the Provider, comply, with all instructions and/or guidelines produced and supplied by or on behalf of the Authority or Customer from time to time for the handling and storage of Confidential Information, generally or for specific items.
9. The Recipient will not disclose any Confidential Information or any part thereof to any third party.
10. Where the Recipient is an employee of the Provider, breach of the obligations set out herein in this Agreement shall be a cause of disciplinary proceedings, and the Provider shall institute and enforce such disciplinary proceedings as against the Recipient in relation to such breach.
11. Where the disclose is a professional advisor, sub-contractor or consultant, breach of the obligation set out herein shall entitle the Provider to terminate the contract of engagement or sub-contract with the Recipient immediately, and the Provider shall enforce such right of termination as against the Recipient in relation to such breach.
12. All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Provider or where so required by the Authority or Customer and notified to the Recipient, to the Authority or a customer, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
13. The Confidential Information will not be used by the Recipient for any purpose or in any way other than under this Agreement.
14. The following circumstances shall not constitute a breach of the obligations of confidentiality contained in this Agreement:
 - 14.1 Disclosure of Confidential Information by the Recipient when required to do so by Law or pursuant to the rules or any order having the force of Law of any court, of competent jurisdiction;
 - 14.2 Disclosure of Confidential Information by the Recipient where and to the extent that the Confidential Information has, except as a result of breach of confidentiality, become publicly available or generally known to the public at the time of such disclosure;
 - 14.3 Disclosure of Confidential Information by the Recipient where and to the extent that the Confidential Information is already lawfully in the possession of a recipient or lawfully known to it prior to such disclosure;
 - 14.4 Possession of Confidential Information by the Recipient where it has been acquired from a third party who is not in breach of any obligation of confidence in providing that Confidential Information;

provided that, in no event shall information relating to the affairs of any identifiable person be disclosed or released from the obligations herein without the prior written consent of the Authority.

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

GENERAL

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

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

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

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

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

SIGNED by the Recipient:

FRAMEWORK AGREEMENT SCHEDULE 11

COMMERCIALLY SENSITIVE INFORMATION

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

PROVIDER'S COMMERCIALLY SENSITIVE INFORMATION	DATE	DURATION OF CONFIDENTIALITY