

**LAB4041 SU Framework Agreement: Schedule 1
Order Form and Call Off Contract**

Part 1: ORDER FORM



Department
for Environment
Food & Rural Affairs

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**Department for Environment, Food and Rural Affairs (Defra) on behalf of
the Animal and Plant Health Agency (APHA)**

██████████
Key Customer Manager
BOC UK & Ireland
43 Church Street West
Woking
Surrey GU21 6HT

18th April 2024

Dear Sirs

**Call-Off Contract No:C23377: For the Supply of Solid Carbon Dioxide (CO2, 'Dry Ice')
under Lot 4 of Framework Agreement LAB4041 SU**

Further to the Framework Agreement dated 01/11/21 to 31/10/24 and with extension date to 31/10/25, we wish to instruct you to supply the Goods described below in accordance with the terms of the Framework Agreement, this Order Form and the Call-Off Terms and Conditions, as further set out in Brief and described in Annex A.

The particulars of this Call-Off Contract are set out below:

Item	Description
Order Form Reference: (Front page of Call-Off Terms and Conditions)	The Order Form Reference is SUPC Framework, Ref: LAB4041 SU, Lot 4 Solid Carbon Dioxide (CO2, 'Dry Ice')

Parties	<p>Between:</p> <p>Animal and Plant Health Agency (APHA), whose registered office is at, Woodham Lane, Addlestone Surrey, KT15 3NB (Customer)</p> <p>and</p> <p>BOC UK & Ireland (), whose registered office is at 43 Church Street West, Woking, Surrey GU21 6HT, England, (Supplier).</p>																																							
Call-Off KPIs (Cl. Error! Reference source not found.)	<p>Part 2: Key Performance Indicators</p> <p>1. The Framework Agreement KPIs are as set out in the below table:</p> <table><tr><th>Performance Target</th><th>Key Indicator</th><th>Performance Target</th></tr><tr><td>Respond to all URGENT enquiries within four working hours</td><td>Provision of Response</td><td>95%</td></tr><tr><td>Acknowledge all NORMAL enquiries within four working hours</td><td>Provision of Response</td><td>95%</td></tr><tr><td>Respond to all NORMAL enquiries within 2 working days of request</td><td>Provision of Response</td><td>95%</td></tr><tr><td>Invoice accuracy and timeliness</td><td>Accuracy</td><td>95% of all invoices are submitted accurately and on shipment</td></tr><tr><td>Number of accounts put on stop</td><td>Account Process</td><td><1% per year</td></tr><tr><td>Quotations provided within 2 working days of original request</td><td>Provision of Response</td><td>95%</td></tr><tr><td>Attendance at site meetings notified as urgent within 5 working days of request</td><td>Provision of Response</td><td>95%</td></tr><tr><td>Use commercially reasonable endeavours to deliver all goods covered under this Framework Agreement within the lead-times specified to member locations throughout the UK.</td><td>Delivery of Goods</td><td>95% of products delivered on time in full</td></tr><tr><td>Stock availability of products listed in the catalogue throughout the Framework Agreement Period</td><td>Product Availability</td><td>95% of products available at all times</td></tr><tr><td>Product Accuracy and Reliability</td><td>Failure rate of delivered items</td><td>Fewer than 1% of received Goods fully or part rejected by Member as being below satisfactory quality</td></tr><tr><td>Dry Ice Weight and Quality</td><td>Check weight and condition of dry ice</td><td>Fewer than 3% of dry ice deliveries fully or part rejected by Member as being below satisfactory quality</td></tr><tr><td>MI Returns: All MI returns to be submitted by the 15th day of the month following quarter end</td><td>Reporting</td><td>4 submissions per year per lot awarded Data to be submitted quarterly by the 15th of the month following quarter end</td></tr></table>	Performance Target	Key Indicator	Performance Target	Respond to all URGENT enquiries within four working hours	Provision of Response	95%	Acknowledge all NORMAL enquiries within four working hours	Provision of Response	95%	Respond to all NORMAL enquiries within 2 working days of request	Provision of Response	95%	Invoice accuracy and timeliness	Accuracy	95% of all invoices are submitted accurately and on shipment	Number of accounts put on stop	Account Process	<1% per year	Quotations provided within 2 working days of original request	Provision of Response	95%	Attendance at site meetings notified as urgent within 5 working days of request	Provision of Response	95%	Use commercially reasonable endeavours to deliver all goods covered under this Framework Agreement within the lead-times specified to member locations throughout the UK.	Delivery of Goods	95% of products delivered on time in full	Stock availability of products listed in the catalogue throughout the Framework Agreement Period	Product Availability	95% of products available at all times	Product Accuracy and Reliability	Failure rate of delivered items	Fewer than 1% of received Goods fully or part rejected by Member as being below satisfactory quality	Dry Ice Weight and Quality	Check weight and condition of dry ice	Fewer than 3% of dry ice deliveries fully or part rejected by Member as being below satisfactory quality	MI Returns: All MI returns to be submitted by the 15th day of the month following quarter end	Reporting	4 submissions per year per lot awarded Data to be submitted quarterly by the 15 th of the month following quarter end
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Charges (Cl.1)	<p>The Charge(s) for this Order are:</p> <table><tr><th>Dry Ice Product</th><th>Price</th></tr><tr><td>10kg bag of pellets</td><td></td></tr><tr><td>10kg pack of slices</td><td>£</td></tr></table> <p>FIXED CHARGES £ PER TRANSACTION</p> <table><tr><td>DELIVERY TO A LOADING BAY: 1 TO 4 PACKAGES</td><td>£</td></tr><tr><td>DELIVERY TO A LOADING BAY: 5 OR MORE PACKAGES</td><td>£</td></tr></table>	Dry Ice Product	Price	10kg bag of pellets		10kg pack of slices	£	DELIVERY TO A LOADING BAY: 1 TO 4 PACKAGES	£	DELIVERY TO A LOADING BAY: 5 OR MORE PACKAGES	£																													
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	UNASSISTED DELIVERY TO A CAGE	£ [REDACTED]
	GUARANTEED NEXT DAY DELIVERY, (incl Saturday)	£ [REDACTED] for a single 10kg pack inclusive of product and delivery charge. £ [REDACTED] per bag for 2 bags, £ [REDACTED] per bag for 3 bags, £ [REDACTED] per bag for 4 bags and £ [REDACTED] per bag for 5 or more bags.
	COLLECTION OF DRY ICE FROM A BOC DEPOT	£ [REDACTED]
	MINIMUM ORDER QUANTITY OR VALUE?	1 Pack of 10kg
Contract End Date (Cl. 1)	<p>Means the End Date for the initial Contract term of 28/02/2026.</p> <p>The Customer may extend the Contract for a period of one (1) year, for which the End Date shall be 28/02/2027.</p> <p>The optional extension period shall be subject to budget availability, governance approvals and agreement that pricing shall be no greater than any ruling on BOC/IUPC pricing against this or future IUPC Gases Framework .</p> <p>Any additional purchases to be made on the sole basis that:</p> <p>SUPC framework optional 12-month extension from 31/10/2024 to 31/10/2025 is applied and that this framework continues as a compliant route to market for this requirement throughout the term of this contract; and</p> <p>BOC continues to rank as the first available supplier able to meet the requirement on Lot 4 of this Framework.</p>	
Contract Value (Cl. 1)	<p>Means the contract value for the initial Contract term of £ [REDACTED] excl. VAT, (£ [REDACTED]).</p> <p>The Customer may extend the Contract for a period of one (1) year. The contract value for the optional extension period is £ [REDACTED] excl. VAT (£ [REDACTED]).</p>	
Delivery Date(s) (Cl. 1)	<p>The Supplier shall deliver the Goods to the Authority by the following date(s): Weekly deliveries every Tuesday morning throughout the term of the Contract.</p> <p>However, if a Tuesday coincides with a bank holiday, the delivery shall be made the following working day.</p> <p>Deliveries are scheduled to occur between 08:00 and 12:00.</p>	
Defects Rectification Period (Cl. 1)	As per the Framework Call Off Terms and Conditions.	
Goods (Cl. 1)	<p>The Goods to be supplied under this Call-Off Contract are as follows:</p> <p>Weekly deliveries of six (6) x 10kg bags of Dry Ice pellets.</p> <p>The Customer shall have the ability to request additional, urgent orders, as and when required. Additional, urgent orders will be placed by the Customer before 14:00 on a Working Day and shall be delivered by the Supplier within two (2) Working Days of the order being placed.</p>	

Premises (Cl. 1)	<p>The Goods are to be delivered to:</p> <p>APHA Weybridge (Central Stores)</p> <p>New Haw</p> <p>Addlestone</p> <p>Surrey</p> <p>KT15 3NB</p> <p>Occasionally, delivery will be required to one of the Customer's Regional Laboratories based within Great Britain (please see Appendix B). Delivery details will be confirmed by the Customer when the order is placed.</p>
Services (Cl. 1)	<p>The Services to be supplied under this Call-Off Contract are as follows:</p> <p>N/A</p>
Services Commencement Date (Cl. 1)	N/A
Services End Date (Cl. 1)	N/A
Supplier Liability Cap (Cl. 1)	As per the Framework Call Off Terms and Conditions.
Installments (Cl. 1) Error! Reference source not found.)	On acceptance of this Order Form, the Customer will raise a annual Purchase Order (PO) for the Goods detailed in Cl.1 'Goods'. Following satisfactory delivery and acceptance of the Goods, the Supplier shall issue separate invoices for the Purchase Order against the Goods receipted.

Notices (Clause 19.3)	<p>Any written notice provided under Clause 19.1 shall be sent:</p> <p>In the case of the Customer:</p> <p>To: Attention: [REDACTED] Assistant Contract Manager Animal and Plant Health Agency (APHA) Weybridge Woodham Lane New Haw Addlestone Surrey KT15 3NB Telephone: [REDACTED] Email: [REDACTED]</p> <p>In the case of the Supplier:</p> <p>To: Attention: [REDACTED] Research Account Manager BOC UK & Ireland 43 Church Street West Woking Surrey GU21 6HT Phone [REDACTED] email: [REDACTED]</p>								
Data Protection Particulars (Schedule 4)	<table border="1"> <tr> <td>The subject matter and duration of the Processing</td><td>No personal data processed</td></tr> <tr> <td>The nature and purpose of the Processing</td><td>No personal data processed</td></tr> <tr> <td>The type of Personal Data being Processed</td><td>No personal data processed</td></tr> <tr> <td>The categories of Data Subjects</td><td>No personal data processed</td></tr> </table>	The subject matter and duration of the Processing	No personal data processed	The nature and purpose of the Processing	No personal data processed	The type of Personal Data being Processed	No personal data processed	The categories of Data Subjects	No personal data processed
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This Call-Off Contract incorporates all the terms and conditions of the Framework Agreement.

For the avoidance of doubt where you have carried out any work prior to the date of this Call-Off Contract in any way related to the Goods and/or Services to be supplied under this Call-Off Contract the terms and conditions of this Call-Off Contract and the Framework Agreement shall apply in respect of such work.

Words and expressions which are defined in the Framework Agreement shall have the same meaning in this Call-Off Contract unless expressly defined otherwise here.

You must not make any amendments to the Call-Off Terms and Conditions.

Nothing in this Call-Off Contract shall confer or purport to confer on any third party any benefit or the right to enforce any term of this letter pursuant to the Contracts (Rights of Third Parties) Act 1999.

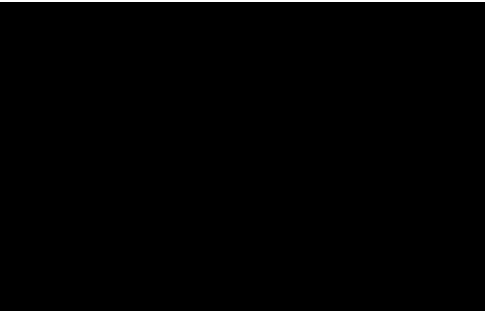
Please sign and return the attached copy of this Order Form to signify your acceptance of its contents.

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

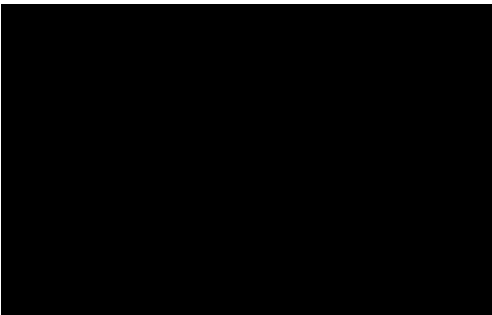
Yours faithfully

Accepted and acknowledged by:

Supplier Signature:



Customer Signature:



Annex A: Brief

1. Background

- 1.1 The Customer requires the supply and delivery of Dry Ice Pellets (the Goods) for operational use by laboratory staff for transporting temperature sensitive perishable items.
- 1.2 The Goods required are used across all Science Delivery departments within the Customer's organisation and any delay in the supply chain could potentially bring a halt to certain aspects of the Customer organisation's work.

2. Scope of Requirements

- 2.1 The Solid Carbon Dioxide (**CO₂**, 'Dry Ice') supplied shall be of a quality suitable for general, commercial and food use and is required in pellet form.
- 2.2 Each bag shall have a minimum mass of 10kg on delivery and so allowance for sublimation during storage, transport, and delivery shall be made.
- 2.3 The Supplier shall supply six (6) x 10kg bags of Dry Ice pellets, to be delivered to the Customer's Weybridge site every Tuesday morning during the life of the Contract. However, if a Tuesday coincides with a Bank Holiday (public holidays in England and Wales), the delivery shall be made on the next Working Day (Monday to Friday, excluding weekends and public holidays in England and Wales). Deliveries are scheduled to occur between 8:00 and 12:00.
- 2.4 The Customer shall have the ability to request additional, urgent orders, as and when required.
- 2.5 Additional, urgent orders will be placed by the Customer before 14:00 on a Working Day and shall be delivered by the Supplier within two (2) Working Days of the order being placed.
- 2.6 Occasionally, delivery will be required to one of the Customer's Regional Laboratories based within Great Britain (please see Appendix B). Delivery details will be confirmed by the Customer when the order is placed.

3. Transport and Delivery

- 3.1 Deliveries of Goods will be made to:

APHA Weybridge (Central Stores)
Woodham Lane
New Haw
Addlestone
Surrey
KT15 3NB

- 3.1 All Deliveries of hazardous Goods must be carried out in compliance with European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) Legislation and all other relevant legislation. All Delivery drivers must have received appropriate training in line with the ADR regulations.
- 3.2 Delivery Notes shall contain the following information:
 - Purchase order number
 - Brief Description of Goods
 - Quantity delivered

4. Performance Management Framework (including Key Performance Indicators and Service Credits).

Not used – please refer to the Framework Call Off Terms and Conditions.

Appendix A – Call-Off Contract Terms and Conditions

CUSTOMER:

Animal and Plant Health Agency (APHA)
Weybridge Woodham Lane New Haw Addlestone,
Surrey KT15 3NB.

Telephone: [REDACTED]

and

SUPPLIER:

BOC UK & Ireland
43 Church Street West Woking
Surrey GU21 6HT

Phone [REDACTED]

Call-Off terms and conditions for the supply of Laboratory & other gases, associated Equipment and Services (Lot 4)

ORDER FORM REFERENCE: Call-Off Contract No:C23377: For the Supply of Solid Carbon Dioxide (CO₂, 'Dry Ice') under Lot 4 of Framework Agreement LAB4041 SU

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Call-Off Terms and Conditions

Dated

Between:

- (1) The Customer; and
- (2) The Supplier.

(the identities of the Customer and Supplier are set out in the Order Form)

Whereas:-

- (A) The Authority acts as the lead organisation on behalf its Member Institutions (as defined below) providing its Member Institutions with pre-tendered arrangements for a variety of goods and services.
- (B) The Authority issued a contract notice 2021-522616 on 23rd April 2021 in the Official Journal of the European Union seeking expressions of interest from potential suppliers for the provision of certain goods and services to Member Institutions and Participating Consortium (as defined below).
- (C) Following a tender process compliant with the requirements of the Public Contracts Regulations 2015, the Authority selected a group of suppliers to be eligible to provide the Goods and Services on a call-off basis and entered into individual framework agreements with those suppliers and this included the Authority and the Supplier entering into the Framework Agreement (as defined below).
- (D) Pursuant to the Framework Agreement, the Customer has appointed the Supplier to provide the Goods and Services in accordance with the Contract (as defined below).
- (E) These Call-off Terms and Conditions set out the terms and conditions for the provision of the Goods and Services and the obligations of the Supplier in the provision of the Goods and Services.

Now it is hereby agreed as follows:-

1 Definitions and Interpretation

1.1 In this Contract the following words and expressions shall have the following meanings:-

“Allocation Event means the occurrence of an event (or series of events) or circumstances which cause there to be insufficient amounts of the relevant Gas to be available in order to meet market demand for supply.

Authority means the Southern Universities Purchasing Consortium, an operating unit of Southern Universities Management Services (company number 02732244; registered charity number 1042175);

ADR Notice has the meaning given in Clause 26.4;

Anti-Slavery Laws has the meaning given in Clause 28;

Brief means the Customer's requirements for the supply of the Goods and Services annexed to the Order Form and any changes to the same notified by the Customer to the Supplier from time-to-time;

Brexit means the end point of any phased transition arrangement agreed between the United Kingdom and the European Union leading to the United Kingdom ceasing to be subject to the transition or

implementation arrangements provided for by Part 4 of the withdrawal agreement between the UK and the European Union negotiated under Article 50(2) of the Treaty of the European Union which sets out the arrangements for the UK's withdrawal from the European Union (as such arrangements are extended **from time to time**);

Call-Off KPIs means the key performance indicators set out in the Order Form;

Call-Off Terms and Conditions means the terms and conditions set out in this Contract, as referred to in the Framework Agreement;

Charges means the charges set out in the Order Form (and **Charge or Charge(s)** shall be construed accordingly);

Confidential Information means all confidential information which the Disclosing Party directly or indirectly discloses, or makes available in whatever form (e.g. written, oral, visual, audio or electronic form), to the Recipient in connection with this Contract and / or the business of the Authority, the other Participating Consortia, the Member Institutions and / or the Supplier. This includes, but without limitation, all confidential information relating to:

- (a) the business, affairs, pricing, finances, customers, suppliers or marketing of the Disclosing Party; and
- (b) the operations, processes, product information, know-how, technical information, designs, of the Disclosing Party,

but excludes any information that:

- i) is or becomes public information other than as a direct or indirect result of any breach by the Recipient of this Framework Agreement;
- ii) is identified in writing at the time of delivery as non-confidential by the Disclosing Party; or
- iii) is known by the Recipient before the date the information is disclosed to it by the Disclosing Party or is lawfully obtained by the Recipient after that date from a source which is, so far as the Recipient is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

Contract means the written agreement between the Customer and the Supplier consisting of the Order Form (and any appendices thereto), the Brief (annexed to the Order Form) and these Call-Off Terms and Conditions;

Contract End Date means the date detailed as such in the Order Form as such date may be extended pursuant to Clause **Error! Reference source not found.** of this Contract;

Customer's IP means all Intellectual Property Rights in any Documentation provided by the Customer under the Contract;

Data Protection Legislation means the Data Protection Act 2018 and GDPR and any national implementing laws, regulations and secondary legislation (as amended or updated from time to time and any successor legislation to the GDPR or the Data Protection Act 2018);

Delivery Date(s) means the date(s) detailed as such in the Order Form;

Defect means any part or parts of the Goods that are defective or not in accordance with the Contract;

Defects Rectification Period means the period set out as such in the Order Form;

Disclosing Party means the Customer, the other Participating Consortia, the Member Institutions and / or the Supplier (as relevant) when it discloses its Confidential Information, directly or indirectly, to a Recipient.

Dispute means any dispute or difference of whatsoever nature in relation to the formation, operation or interpretation of, or otherwise in connection with, or arising out of, the Contract;

Dispute Notice means a written notice of any Dispute, setting out the Dispute's nature and full particulars of the Dispute and which states it is a "Disputes Notice";

Documentation means any data, information, records or documents in any media and form whatsoever (including paper or electronic form);

EIR means the Environmental Information Regulations 2004;

FOIA means the Freedom of Information Act 2000;

Force Majeure Event has the meaning given in Clause 18.1;

Framework Agreement means the framework agreement for the supply of the Goods and Services made between the Authority (1) and the Supplier (2) and dated 01/11/2021.

Framework Agreement KPIs means the key performance indicators set out in Schedule 7 to the Framework Agreement;

Gas means any gas or gas mixture supplied by the Supplier to the Authority (or other relevant Participating Consortium or Customer) under this Contract, including liquefied, solidified, compressed or dissolved gas;

GBP means the United Kingdom Pound Sterling;

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

Good Industry Practice means the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the provision of Goods and Services similar to the Goods and Services under the same or similar circumstances as those applicable to this Contract;

Goods means the goods identified as such in the Order Form including where relevant Made to Order Goods;

Intellectual Property Rights means all intellectual property rights anywhere in the world including domain names, patents, design rights, copyrights including rights in computer software and databases (including database rights), rights in source code, topography right, trademarks, trade names, logos, trade secrets and know-how, and any applications or the right to make applications for any of the above, existing now or at any time in the future and whether registered or registrable or not;

Installation Date means the date detailed as such in the Order Form;

KPIs means the Framework Agreement KPIs and the Call-Off KPIs;

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, any applicable judgment of a relevant court of law which is a binding precedent in England and Wales, or directives or requirements of any Regulatory Body;

Losses has the meaning given to it in Clause 20.1 (Indemnities);

Made to Order Goods means Goods made to order for the Customer by the Supplier to meet bespoke requirements of the Customer, excluding standard or “off the shelf” Goods usually made available for sale by the Supplier;

Marketing Premium has the meaning given in the Framework Agreement;

Marketing Premium Rate has the meaning given in the Framework Agreement;

Member Institution has the meaning given in the Framework Agreement;

Mini Tender has the meaning given in the Framework Agreement;

Order means the order placed by the Customer to the Supplier in accordance with the Framework Agreement, which sets out the description of the Goods and Services to be supplied;

Order Form means the document used by the Customer to place the Order for this Contract;

Participating Consortium has the meaning given it in the Framework Agreement;

Personnel means those personnel of the Supplier as shall be appointed by the Supplier to supply the Goods and Services in accordance with the Contract including the Supplier's employees and subcontractors;

Premises means the premises detailed as such in the Order Form;

Project IP means all Intellectual Property Rights in any Documentation provided by the Supplier under the Contract and all other Intellectual Property Rights created or discovered by the Supplier as a result of, for or in connection with the performance of its obligations under the Contract, but excluding Supplier's Background IP;

PCR means the Public Contracts Regulations 2015;

Recipient: the Customer and / or the Supplier when it receives Confidential Information, directly or indirectly, from a Disclosing Party;

Regulatory Body means any government department and regulatory, statutory and other entity, committee, ombudsman and/or body which, whether under statute, rules, regulations, codes of practice or otherwise, is entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer;

Schedule(s) means any one or more of the schedules attached to these Call-Off Terms and Conditions;

Services means the services identified as such in the Order Form;

Services Commencement Date means the date detailed as such in the Order Form;

Services End Date means the date detailed as such in the Order Form;

Specification means the specification for the relevant Goods or Services, which unless previously provided by the Supplier to the Authority (or other relevant Participating Consortium or Customer), is available on request from the Supplier.

Supplier Equipment has the meaning given to it in Clause 6.8.

Supplier's Background IP means all Intellectual Property Rights existing prior to the date of the Contract and used by the Supplier for or in connection with the performance of its obligations under the Contract;

Supply Rates means the rates set out in Schedule 2 of the Framework Agreement as may be amended pursuant to the procedures set out in Schedule 2;

Term means the period from the date of the Contract up to and including the earliest of:

- (a) the Contract End Date; or.
- (b) *the date the Contract is terminated in accordance with Clause 17;*

Third Party Agreements has the meaning given in Clause **Error! Reference source not found.;**

Treaties means those referred to in section 2 of the European Communities Act 1972;

Value Added Tax means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994; and

Variation has the meaning given in Clause **7Error! Reference source not found..**

1.2 In these Call-Off Terms and Conditions unless the context otherwise requires:

- 1.2.1 clause headings are inserted for convenience only and shall not affect the construction and interpretation of this Contract and all references to Clauses, Sub-clauses, or Schedules are to Clauses and Sub-clauses of, and Schedules to, these Call-Off Terms and Conditions; and
- 1.2.2 words denoting the singular number include the plural and vice versa; and
- 1.2.3 words denoting the masculine include the feminine and vice versa; and
- 1.2.4 references to persons include reference to bodies corporate and unincorporate; and
- 1.2.5 references to statutes or statutory instruments or any Law are to be construed as references to any consolidation, modification, extension, amendment, replacement or re-enactment of them from time to time and any subordinate legislation under it.

2 **Contract Documents**

- 2.1 The Contract consists of the following documents:
 - (a) these Call-Off Terms and Conditions;
 - (b) the Schedule(s) to these Call-Off Terms and Conditions;
 - (c) the Order Form (and any appendices thereto); and
 - (d) the Brief (annexed to the Order Form).
- 2.2 The Contract is made pursuant to the
- 2.3 In the event of any inconsistency or conflict between the Framework Agreement and the Contract, the Framework Agreement shall prevail. In the event of any inconsistency or conflict between the Contract documents in Clause 2.1 above, the order of precedence shall be the order in which those documents appear.
- 2.4 Save in respect of the Framework Agreement, the Contract supersedes all other oral and/or written communications, representations, agreements or undertakings between the parties in relation to the Goods and Services

3 Appointment

- 3.1 The Customer appoints the Supplier as the supplier of the Goods and Services set out in the Order Form.
- 3.2 The Contract shall take effect on and from the date of the Contract and shall expire automatically at the end of the Term.
- 3.3 The Customer may, by giving written notice to the Supplier not less than 3 (three) month(s) before the Contract End Date, extend the Contract End Date for any further period or periods specified in the Order Form provided that the total Term is 4 years. The provisions of the Contract will apply throughout any such extended period.
- 3.4 Any omission on the part of the Customer to inspect, review or disapprove shall not diminish or relieve the Supplier from any of its obligations or responsibilities under or in connection with the Contract.
- 3.5 The Supplier shall be responsible for the accuracy of all drawings, documents and information supplied to the Customer by the Supplier in connection with the supply of the Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein. Notwithstanding the aforementioned, where such discrepancies, errors or omissions arise out of or in connection with drawings, documentation and information based on / prepared by reference to drawings, documents and information provided to the Supplier by the Customer, the Supplier shall have no such responsibility or obligation to pay.

4 No Partnership or Agency

- 4.1 Nothing in this Contract is intended to, or shall be deemed to:
- 4.1.1 [establish any partnership or joint venture between any of the parties;](#)
- 4.1.2 constitute any party as the agent of another party; or
- 4.1.3 authorise any party to make or enter into any commitments for or on behalf of any other party.
- 4.2 The Supplier confirms it is acting on its own behalf and not for the benefit of any other person.

5 Non Exclusivity

The Supplier acknowledges that, in entering the Contract, no form of exclusivity has been granted by the Customer for the supply of any Goods and Services and that the Customer is at all times entitled to enter into other contracts and arrangements with any other suppliers for the supply of any Goods and Services which are the same or similar to that which the Supplier may supply.

6 Supply of the Goods and Services

- 6.1 The Supplier warrants and undertakes to the Customer that:
- (a) it shall supply the relevant Goods and Services diligently and in accordance with the Contract and in compliance with all applicable Laws and Good Industry Practice:
- (b) it has exercised and shall continue to exercise in the performance of all its duties under the Contract all the skill, care and diligence reasonably to be expected of a properly qualified and competent supplier experienced in the supply of Goods and Services of a similar nature to the Goods and Services;

- (c) it shall supply the relevant Goods and Services in such a manner and at such times so that no act, omission or default of the Supplier shall cause or contribute to any breach of Law;
- (d) it shall supply the relevant Goods and Services in compliance with all reasonable instructions given in writing under or in connection with the Contract;
- (e) it shall at all times observe and provide the Goods and Services in accordance with the KPIs;
- (f) all relevant Goods and Services supplied by the Supplier shall:
 - (i) at the time of delivery meet the Specification;
 - (ii) be properly packaged to survive transit and storage without damage, clearly labelled and addressed; and
 - (iii) otherwise comply with all applicable Laws.

6.2 Upon delivery of the Goods, the Supplier shall provide the Customer with a delivery note specifying details of the relevant Order Form, if supplied by the Customer.

6.3 Notwithstanding the provisions of Clause **Error! Reference source not found.**, the Customer shall be entitled

to reject the Goods by notice to the Supplier within 30 (thirty) days of delivery to the Premises if they do not comply with the terms of the Contract. Any rejected Goods shall be returned to the Supplier at the Supplier's risk and expense and the Supplier shall be required to deliver replacement Goods to the Customer at no extra cost to the Customer within the following timescales:

6.3.1 for all Goods except Made to Order Goods, within 15 (fifteen) days of receipt of the Customer's rejection notice; and

6.3.2 for Made to Order Goods, a period no greater than the original delivery timescales for those Goods commencing on the date the Customer's rejection notice is received by the Supplier.

A Customer's right to reject under this Clause **Error! Reference source not found.** shall apply equally to any Goods replaced hereunder.

6.4 No failure by a Customer to reject the relevant Goods under Clause **Error! Reference source not found.** shall

constitute acceptance or acknowledgment by the Customer of the relevant Goods or the condition in which they were delivered, or in any way diminish or relieve the Supplier from any of its obligations or responsibilities under or in connection with the Contract

6.5 Not used

6.6 Not used

6.7 Notwithstanding Clause **Error! Reference source not found.** and 6,9, during the Term and the applicable Defects Rectification Period, the Supplier shall make good any Defect(s) discovered in the Goods (by replacement or otherwise) at its own cost and expense within the following timescales:

6.7.1 for all Goods except Made to Order Goods, within 30 (thirty) days (or such other time period as may be agreed between the Customer and the Supplier) of receiving notice from the Customer regarding the Defect; and

6.7.2 for Made to Order Goods, a period no greater than the original delivery timescales for those Goods commencing on the date the Customer's notice of Defect is received by the Supplier;

provided always that such Defect did not arise as a result of the Customer using the Goods other than in accordance with the instructions provided by the Supplier (save in respect of Gas where the Supplier provides no instructions for use). If the Supplier fails to comply with its obligations under this Clause **Error! Reference source not found.**, the Customer shall be entitled to engage another supplier to make good any Defect(s) discovered in the relevant Goods and the Customer shall be entitled to recover the cost of doing so from the Supplier as a debt.

6.8 Title to the relevant Goods (or part thereof) (except for Goods comprising any cylinder, container or other storage vessel and / or other equipment owned by the Supplier (the "Supplier Equipment") shall pass to the Customer upon the earlier of:

6.8.1 delivery of the relevant Goods (or part thereof) to the Premises in accordance with the Contract; or

6.8.2 payment for the relevant Goods (or part thereof) in accordance with the Contract.

6.9 Title to the Supplier Equipment shall at all times remain with the Supplier.

6.10 If title to the Goods (or part thereof) (excluding the Supplier Equipment) passes to the Customer prior to delivery, the Supplier shall arrange for the Goods to be marked as the Customer's property and shall ensure that they are stored and handled separately from other goods.

6.11 Risk of loss or damage to the relevant Goods (or part thereof) (including the Supplier Equipment shall pass to the Customer when the Goods (or part thereof) (including Supplier Equipment) are delivered to the Premises in accordance with the Contract, save to the extent that any loss or damage after delivery is attributable to an act of the Supplier or its Personnel.

6.12 If the Supplier becomes aware of any matter (except for any matter that constitutes a Force Majeure Event or an Allocation Event) that may impact on its ability to deliver the relevant Goods and Services in accordance with the Contract, it must promptly on becoming aware notify the Customer and shall propose and, if accepted by the Customer, implement any measures which may be practical to overcome or reduce any adverse impact on the Customer. The Supplier shall bear the cost of implementing such measures save where the relevant matter is a direct result of any wilful act, negligence or breach by the Customer of its obligations under the Contract.

6.13 The Supplier shall comply with the provisions of Schedule 5 (KPIs).

7 Variations to the Contract

7.1 The parties acknowledge that the Customer may, at any time:

7.1.1 instruct the Supplier to add or omit any Goods and Services to or from that which is being supplied under the Contract; or

7.1.2 instruct a change to the Brief annexed to the Order Form,

(a Variation)

provided always that such Variation shall not amount to a substantial variation for the purposes of regulation 72 of PCR (which the Customer shall determine in its sole discretion).

7.2 If any Variation instructed by the Customer shall:
in respect of the Goods and Services being supplied under the Contract, increase or decrease the relevant Charge(s); and/or
in respect only of the Goods being supplied under the Contract, affect the Supplier's ability to supply the Goods by the relevant Delivery Date(s),
the Supplier shall submit a quotation to the Customer within 10 (ten) days of the Variation instruction setting out the proposed increase or decrease to the relevant Charge(s) (calculated solely on the basis of the Supply Rates) and, where Clause 7.2.2 applies, the proposed extension(s) to the relevant Delivery Date(s).

7.3 Within 10 (ten) days of receipt of a Supplier's quotation pursuant to Clause 0, the Customer shall either accept the quotation, in which case the relevant Charge(s) and

Delivery Date(s) shall be adjusted accordingly or withdraw the Variation instruction.

7.4 Until the Supplier's quotation is accepted in accordance with Clause 0, the Supplier shall continue to perform its obligations under the Contract as if the Variation had not been instructed and the Supplier agrees that the preparation of a quotation to be provided under Clause 0 will not cause any delay to the supply of the relevant Goods and Services.

7.5 The Supplier shall have no entitlement to any increase in the relevant Charge or any extension(s) to the relevant Delivery Date(s) where it complies with a Variation instruction prior to its quotation being accepted in accordance with Clause 0.

7.6 Subject to clause 7.8, the Supplier may request, in writing, a variation to the Charge(s) in the event there is a change in Law which was not reasonably foreseeable prior to the date of the Contract which impacts on the Charge under the Contract. If the Supplier so requests a variation, the parties shall meet within 10 (ten) days of the date of such written request and shall agree any changes to the Charge in writing.

7.7 The Supplier and Customer acknowledge that in the event that the Supply Rates are amended in accordance with the procedures set out in Schedule 2 of the Framework Agreement, such amendments shall not apply to the Charge under this Contract unless agreed otherwise in writing between the parties and the Authority (in accordance with paragraph 8 of Schedule 2 of the Framework Agreement).

7.8 Where any variation is proposed by the Supplier, the Customer shall be entitled to refuse any such proposal including a proposal that does or could amount to a substantial variation for the purposes of regulation 72 of PCR.

8 Payment of the Charge(s) and the Marketing Premium

Payment of the Charge(s)

8.1 The Customer shall pay the Supplier the Charge(s) as stated in Order Form as full remuneration for the supply of the Goods and Services in accordance with the Contract.

8.2 Each Charge is fully inclusive of all costs and expenses of every kind incurred by the Supplier in connection with the supply of the Goods and Services.

8.3 For the avoidance of doubt each Charge shall be exclusive of Value Added Tax. The Customer shall account for and pay the total amount of Value Added Tax properly due thereon.

8.4 The Charge(s) shall be paid to the Supplier in accordance with any stages set out in the Order Form and within 30 (thirty) days of receipt of properly rendered invoice(s) in accordance with Clause 0.

8.5 The Supplier shall submit invoices to the Customer in respect of any of the Charge(s) properly due to the Supplier under the Contract and all invoices submitted by the Supplier shall show amounts due, amounts invoiced to date.

8.6 8.6 Where any sum due under the Contract is not paid in full by the relevant due date, the Supplier shall be entitled (without prejudice to any other right or remedy) to suspend performance of its obligations under the Contract, provided that the Supplier shall give the relevant Customer not less than 14 (fourteen) days' notice of its intention to suspend performance of its obligations under the Contract and stating the ground(s) on which it intends to suspend performance. The right to suspend performance shall cease when the Customer makes payment in full of the amount due.

8.7 If the Customer fails to pay an amount due to the Supplier by the relevant due date, simple interest shall be added to the unpaid sum from the final date for payment until the actual date for payment. Such interest shall be calculated on a daily basis at the annual rate of 8% above the Bank of England base rate, together with any fixed charges, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and the late payment of Commercial Debts Regulations 2013.

8.8 The Supplier acknowledges and agrees that the Authority, or any other Participating Consortia or any Member Institution has no liability to the Supplier for the payment of any Charges due to the Supplier pursuant to the Contract, unless the Authority or such Participating Consortia or Member Institution is the Customer under the Contract.

Payment of the Marketing Premium

- 8.9 The parties acknowledge that where the Customer is a Member Institution, the Supplier shall pay the Marketing Premium in accordance with the provisions of the Framework Agreement and that the Marketing Premium Percentage may be amended during the Term in accordance with Clause 9.14 of the Framework Agreement.

9. Set Off

- 9.1 The parties acknowledge that the Customer may at any time, without notice to the Supplier, set-off any liability owed by the Supplier to the Customer against any liability owed by the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated and where such liability arises under the Contract. Any such exercise of set-off by the Customer shall not limit or affect any of the Customer's rights or remedies available under this Contract.
- 9.2 For the avoidance of doubt, all amounts due from the Supplier to the Customer under this Contract shall be paid in full without any set-off, counterclaim, deduction or withholding by the Supplier.

10 Personnel

- 10.1 The Supplier warrants to the Customer that all of the Supplier's Personnel shall at all times have the necessary qualifications and experience to perform their duties as required under the Contract.
- 10.2 The Supplier warrants to the Customer that all of the Supplier's Personnel shall at all times have the necessary qualifications and experience to meet the standards offered by the Supplier under the Contract.
- 10.3 The Supplier shall provide such details of its Personnel that may require access to the Premises to perform their duties as required under the Contract as are reasonably requested in writing by the Customer.
- 10.4 The Supplier shall ensure that when on the Premises, its Personnel at all times comply with all Laws and other requirements that may be in force from time to time in relation to the Premises.
- 10.5 The Customer may request in writing the removal of any Supplier's Personnel, where in the Customer's reasonable opinion such Personnel's performance or conduct is or has been unsatisfactory. The Supplier shall promptly remove and replace such Personnel at the Supplier's own cost and expense.

11 Premises

- 11.1 The Customer grants the Supplier a non-exclusive licence to access the Premises, as may be reasonably required for the sole purpose of performing its obligations under the Contract.
- 11.2 The Supplier shall co-operate with all other suppliers or personnel who may also have access to the Premises.

11.3 At the end of the Term, the Supplier shall:

- 11.3.1 remove from the Premises all the Supplier's equipment, Supplier Equipment and unused materials;
 - 11.3.2 clear away all rubbish arising out of or in connection with the supply of the relevant Goods and Services; and
 - 11.3.3 leave the Premises in a clean and tidy condition to the Customer's reasonable satisfaction.
- 11.4 If the Supplier fails to comply with Clause 11.2, the Customer may remove and dispose of the Supplier's equipment and unused materials and clear away and clean the Premises as required by Clauses 0 and 0 and the Customer shall be entitled to recover the cost of doing so from the Supplier as a debt.
- 11.5 Where the Supplier leaves any equipment, Supplier Equipment or materials on the Premises during the Term, the Customer shall be responsible for the safe custody of such equipment, Supplier Equipment or materials. The Customer shall insure the Supplier Equipment to its full replacement cost against "all risks" and against normal public liability risks.

12 Assignment and Sub-contracting

- 12.1 Subject to Clause 0, the Supplier shall not assign, charge or transfer any right or obligation under this Contract or in any way deal or part with its interest in this Contract or any part of it to any person, without the Customer's prior written consent, which shall not be unreasonably withheld (provided always that the Customer shall be entitled to refuse to consent to any assignment, charge or transfer which could or does breach any regulation(s) of the PCR).
- 12.2 The Supplier shall not sub-contract to any person the performance of any of its obligations under this Contract:
- (a) except with the Customer's prior written consent, such consent not to be unreasonably withheld;
 - (b) if any such sub-contracting would be inconsistent with the Supplier's tender in the Original Tender Process and/or the Mini Tender; and
 - (c) if any such sub-contracting could or would in the sole opinion of the Customer breach any regulation(s) of the PCR.

Notwithstanding sub-Clauses 12.2. a), b) and/or c) above, the Customer hereby grants the Supplier consent to sub-contract its delivery obligations under this Contract.

- 12.3 If the Customer consents to the Supplier to sub-contract, then the Supplier shall co-ordinate and integrate such services provided by the sub-supplier with his own and no sub-contracting by the Supplier and no consent by the Customer shall in any way relieve the Supplier from any liability or obligation in respect of the performance of its obligations under this Contract.
- 12.4 The Customer may at any time assign by absolute legal assignment the benefit of all the Supplier's obligations and the entire benefit arising under or out of this Contract to:

- 12.4.1 any Contracting Authority (as defined in the PCR);
- 12.4.2 any other body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Customer;
- 12.4.3 any private sector body which substantially performs the functions of the Customer provided that any such assignment shall not increase the Supplier's obligations under the Contract.
- 12.5 If the Supplier sub-contracts the Contract in accordance with this Clause 12, the sub-contract must be entered into on equivalent and no less onerous terms than the terms of this Contract.

13 Intellectual Property Rights

- 13.1 Any Customer's IP shall remain vested in the Customer and the Customer shall grant the Supplier an irrevocable, transferable, non-exclusive, royalty free licence to use such IP for the purpose of performing its obligations under this Contract.
- 13.2 The Project IP shall immediately vest in the Customer upon its creation or discovery and the Customer shall grant the Supplier an irrevocable, transferable, non-exclusive, royalty free licence to use the Project IP for the purpose of performing its obligations under this Contract.
- 13.3 The Supplier's Background IP shall remain vested in the Supplier and the Supplier shall grant the Customer an irrevocable, transferable non-exclusive, royalty free licence to use the Supplier's Background IP for any purpose related to this Contract and the Goods and/or Services supplied hereunder.
- 13.4 The licences granted under this Clause 0 may be sub-licensed with the prior written consent of the relevant licensor, such consent not to be unreasonably withheld or delayed.
- 13.5 All royalties or other sums payable in respect of the supply and use of any patented article, processes or inventions required for and in relation to the performance of the Supplier's obligations under this Contract shall be paid by the Supplier.
- 13.6 The Supplier shall not be liable for any use of the Supplier's Background IP or Project IP other than that for which they were prepared.
- 13.7 The Customer shall not be liable for any use of the Customer's IP other than that for which they were prepared.

14 Confidentiality and publicity

- 14.1 Subject to this Clause 14 and Clauses 15 and 23:
 - 14.1.1 the Recipient will keep confidential all Confidential Information of the Disclosing Party and will not disclose it to anyone save to the extent permitted by 14.2 below and will ensure that all Confidential Information of the Disclosing Party is protected with security measures and a degree of care that the Recipient would apply to its own confidential information; and

- 14.1.2 the Recipient will use the Confidential Information only to comply with its obligations under this Framework Agreement and/or any Call-Off Contract.
- 14.2 The Disclosing Party agrees that the Recipient may disclose such Confidential Information to:
- 14.2.1 its affiliates, professional advisers, insurers, officers, directors and employees (and in the case of the Authority to Participating Consortia and / or Member Institutions) without the consent of the Disclosing Party, but only insofar as
- (a) the person to whom the Confidential Information is to be given is informed in writing of its confidential nature and that some or all of such Confidential Information may be price sensitive information, except that there shall be no obligation to so inform if the recipient is subject to professional obligations to maintain confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information; and
 - (b) such disclosure is necessary for the effective performance of the Recipient's obligations under this Framework Agreement and/or any Call-Off Contract;
- 14.2.2 to any person to whom information is required or requested to be disclosed by any governmental or regulatory authority, the rules of any relevant stock exchange or pursuant to Law or applicable regulation; or
- 14.2.2 with the prior written consent of the Disclosing Party.
- 14.3 The provisions of this Clause 14 will continue to apply notwithstanding any novation and/or termination of this Framework Agreement and/or any Call-Off Contract for any reason. Notwithstanding the previous sentence, the obligations in Clauses 14.1 and 14.2 shall cease on the date falling 12 (twelve) months after the date of the Recipient's final receipt (in whatever manner) of any Confidential Information.
- 14.4 Neither the Supplier or the Customer shall, without the other party's prior written consent, use that party's corporate name or any other unnamed trademark associated with that party for any purpose, including but not limited to by illustration, advertising, publicising, marketing or selling services and/or
- products, except as may otherwise be required by Law. In such event, the Supplier, or the Customer as the case may be, shall provide the other party with written notice of such request as soon as reasonably practicable, sufficient to allow that party an opportunity to object prior to such disclosure.
- 14.5 Notwithstanding the provisions in this Clause 14 and Schedule 4 (Data Protection), the parties shall comply with the Data Protection Legislation.
- 14.6 To the extent there are any inconsistencies and/or conflicts between this Clause 14 and any separate confidentiality agreement entered into between the Authority and the Supplier (pursuant to the Original Tender Process) and/or between the Customer and the Supplier, the terms of any such confidentiality agreement(s) will prevail.

15 Freedom of Information

- 15.1 The Supplier acknowledges that the Customer is subject to the FOIA and the EIR and the Supplier shall, at its cost, use all reasonable endeavours and take all necessary steps to assist the Customer in complying with the FOIA and/or the EIR. Notwithstanding the aforementioned, the Supplier shall not be required to take any such steps, if it is able to demonstrate to the reasonable satisfaction of the Customer (acting reasonably) that the taking of such steps would result in the disclosure of the Supplier's commercially sensitive information, which should not therefore be disclosed.
- 15.2 If the Supplier receives a 'request' from any third party (as that term is defined in the FOIA and the EIR, as applicable), it shall immediately provide the Customer with a written copy of that request.

16 Insurance

- 16.1 The Supplier warrants that it currently maintains and shall continue to maintain:

16.1.1 professional indemnity insurance;

16.1.2 product liability insurance;

16.1.3 public liability insurance; and

16.1.4 employer's liability insurance,

for the periods set out in Clause 16.1 of the Framework Agreement, all with a well-established and reputable insurance office or underwriter of repute carrying on business in the United Kingdom and the European Union with a limit and basis of indemnity as set out in Article 3 of the Memorandum of Agreement in the Framework Agreement for each and every claim provided always that such insurance is generally available in the United Kingdom and the European Union to the business of the Supplier at commercially reasonable rates and terms. The Supplier shall immediately inform the Customer if such insurance ceases to be generally available at commercially reasonable rates and terms and for the avoidance of doubt it is hereby agreed and declared that any increased or additional premium required by insurers by reason of the Supplier's own claims record or other acts, omissions, matter or things particular to the Supplier shall be deemed to be within commercially reasonable rates.

- 16.2 As and when the Supplier is reasonably requested in writing to do so by the Customer, the Supplier shall produce for inspection sufficient documentary evidence in the form of a standard insurance broker's certificate that the insurance required under Clause **Error! Reference source not found.** is being maintained in accordance with the terms of this Contract.

If the Supplier fails to supply the relevant evidence, the Customer shall be at liberty to effect such insurance cover as it deems necessary at the Supplier's cost.

- 16.3 The Supplier shall not, once a claim under Clause **Error! Reference source not found.** of this Contract has been notified to it, voluntarily do anything which would reduce or tend to reduce the scope of indemnity under its insurance policies or the amount of indemnity monies which will be available thereunder were the claim against it to succeed in full.

17 Termination

- 17.1 The Customer may, in addition to any other rights and remedies which it may have, by giving not less than 6 (six) months' written notice to the Supplier, terminate the Supplier's appointment under this Contract.
- 17.2 The Customer or the Supplier may terminate the Supplier's appointment under this Contract upon serving written notice on the other in the event that:
- (a) the other is in breach of this Contract in any material respect and the other has failed within 30 (thirty) days of the service of the other's written notice to remedy such breach or breaches; and/or
 - (b) distress or execution is levied or threatened upon any of the other's property or any judgement against the other remains unsatisfied for more than 14 (fourteen) days or the other (being an individual) is bankrupt or unable to pay his debts or seeks an arrangement with his creditors, or the other (being a company) has an administrator appointed of it or a receiver or manager or administrative receiver is appointed of it or any of its assets or it enters into liquidation or it proposes or makes any voluntary arrangement with its creditors; any petition is presented or any resolution passed or any steps or proceedings taken which may lead to any of the foregoing occurrences; the other ceases to carry on business; and/or
 - (c) if any of the termination provisions of regulation 73(1) of PCR apply.
- 17.3 The Customer may terminate this Contract in accordance with
- Schedule 1 (Anti-bribery and Corruption); or
- 17.3.2 Schedule 5 (KPIs).
- 17.4 Termination of the Supplier's appointment under this Contract, howsoever arising, shall be without prejudice to the rights and remedies of either of the parties in relation to any negligence, omission or default of the other prior to such termination.
- 17.5 If the Supplier's appointment under this Contract has been terminated pursuant to Clause 17.1, 0 or 17.3 then:
- 17.5.1 after termination of the Supplier's appointment under this Contract, the Supplier shall immediately provide to the Customer copies of all Documentation for and in relation to this Contract which has been prepared by it or on its behalf or is in its possession
 - 17.5.2 the Supplier shall be entitled to send an invoice to the Customer for all outstanding Charges earned by the Supplier for the Services properly performed (whether wholly or in part) and Value Added Tax due thereon;
 - 17.5.3 pursuant to the terms of this Contract, the Customer shall pay to the Supplier any instalments of any Charge and any other amounts which have accrued due prior to the date of termination, together with a proportion of the next following instalment of any Charge commensurate with the Services properly performed up to the date of termination carried out prior to the date of termination; and
 - 17.5.4 the Customer shall be entitled to send an invoice to the Supplier for all outstanding amounts

in relation to the Marketing Premium and Value Added Tax due thereon.

18 Force Majeure

- 18.1 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract (except in relation to payment) if such delay or failure result from events, circumstances or causes beyond its reasonable control ("Force Majeure Event").
- 18.2 In such circumstances the relevant party shall use all reasonable endeavours to mitigate any such delays and the time for performance shall be extended by a period equivalent to the period during which the performance of the obligation has been delayed or failed to be performed by the Force Majeure Event or the affected party shall be entitled to a reasonable extension of time for performing such obligations.

19 Communications

- 19.1 Except as otherwise provided for in this Contract, all notices or other communications under or in respect of this Contract to either party must be in writing and shall be deemed to be duly given or made when delivered, in the case of personal delivery or sent by prepaid recorded delivery or registered post, or when posted, deemed to have been received 48 (forty-eight) hours after the same shall have been posted, or when despatched, in the case of fax or e-mail, to the party addressed to him at the address stated in Clause 19.3 or such other address as such party may by notice in writing nominate for the purpose of service.
- 19.2 A written notice includes a notice by fax or e-mail (confirmed in either case by letter). A notice or other communication received on a non-working day or after normal business hours in the place of receipt, shall be deemed to be given or made on the next following working day in that place.
- 19.3 Any written notice provided under Clause 19 shall be sent:
- 19.3.1 in the case of the Customer, as set out in the relevant Order Form; and
- 19.3.2 in the case of the Supplier, as set out in the relevant Order Form.
- 19.4 Either party may change its respective notice correspondence information referred to in Clause 19.3 by prior written notice to the other party.

20 Indemnities

20.1 The Supplier shall indemnify and keep indemnified in full the Customer from and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all and other reasonable professional costs and expenses) ("Losses") suffered or incurred by the Customer arising out of or in connection with any claim made against:

20.2

20.1.1 the Customer for actual or alleged infringement of any third party Intellectual Property Rights arising out of or in connection with the use of the Supplier's Background IP, the Project IP or the relevant Goods and Services (in each case arising out of or in connection with this Contract); or

20.1.2 the Customer by a third party for death, personal injury or physical damage to property arising out of, or in connection with, defects in Goods or Services, to the extent that the defect in the Goods or Services is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

20.3 The indemnities in Clause 20 shall not apply to the extent that the relevant "Losses" are attributable to the Customer's breach, wilful act or negligent performance or non-performance of this Contract

21 Limit of liability

21.1 Save as set out in Clause 20 and this Clause 21, neither party shall have any liability, howsoever arising, out of or in connection with this Contract, for any:

21.1.1 indirect loss or damage or consequential loss; or loss of contribution to incidental costs, loss of revenue, profit, savings, use, goodwill or overheads or loss of reputation, howsoever arising under, for breach of, or in connection with this Contract.

21.2 When used or referred to in this Clause 21 the term "howsoever arising" shall cover all causes and actions giving rise to liability whether in contract, tort (including negligence), restitution, for breach of statutory duty, misrepresentation or otherwise.

21.3 The Supplier accepts liability for physical damage to the Customer's property to the extent that such damage results from Supplier's breach of this Contract or the Supplier's negligence in connection with the performance of this Contract subject to a limit of £ [REDACTED] ([REDACTED]) per claim or series of claims arising out of the same event or circumstances.

21.4 Supplier accepts liability to the extent that it results from breach of this Contract or the Supplier's negligence in connection with the performance of this Contract for losses, costs, expenses or damage for either i) late delivery; or ii) Goods or Services which fail to meet the Specification, in each case to the extent that such late delivery or failure to meet the Specification results from the Supplier's breach of this Contract or the Supplier's negligence up to a limit of £ [REDACTED] ([REDACTED]) or, if greater, [REDACTED] of the Customer's anticipated monthly spend under this Contract up to a maximum of £ [REDACTED] ([REDACTED]) for any one incident.

- 21.5 The Customer's total liability to the Supplier for all losses howsoever arising under, for breach of, or in connection with this Contract is limited to, and shall not exceed £ [REDACTED] ([REDACTED]) per claim or series of claims arising out of the same event or circumstances.
- 21.6 Nothing in this Clause 21 shall limit or exclude the payment obligations of the Customer under this Contract.
- 21.7 Nothing in this Contract shall limit or exclude:
- 21.7.1 either party's liability to the other for death or personal injury resulting from that party's negligence; or
- 21.7.2 any damage or liability incurred by either party as a result of fraud or fraudulent misrepresentation by the other.

22 Anti-bribery and Corruption

The parties shall comply with Schedule 1 in relation to anti-bribery and corruption.

23 Data Protection

The parties shall comply with Schedule 4 in relation to data protection.

24 Conflicts of interest

- 24.1 The Supplier may not, without the Customer's prior written consent, be directly or indirectly engaged, concerned or have any financial interest in any capacity with the Customer.
- 24.2 The Supplier shall promptly notify the Customer in writing of any actual or potential conflict of interest which arises during the Term and the Customer shall be entitled to require the Supplier to take such reasonable steps to remedy any conflict of interest as are reasonably required by the Customer.

25 The UK's decision to leave the European Union

- 25.1 Neither Brexit, nor any fluctuations in the GBP exchange rate (whether resulting directly or indirectly from Brexit), shall affect in any way the obligations of either party under this Contract and neither party shall be entitled to rely on Brexit and/or any fluctuations in the GBP exchange rate to make any claim against the other, whether for additional time, money or otherwise, on any basis, including for the avoidance of doubt in contract, tort or equity.
- 25.2 An event of Brexit and/or any fluctuations in the GBP exchange rate (whether resulting directly or indirectly from Brexit) shall not permit either party to vary and/or to terminate this Contract (or any part of this Contract) save where that party is otherwise entitled to vary and/or terminate the Contract (or any part of this Contract).
- 25.3 Both parties acknowledge that they have assessed the potential impact of Brexit on their ability to perform their obligations under this Contract and have taken all associated risks into account when entering into this Contract.

- 25.4 Both parties acknowledge and agree that any impact of Brexit on their ability to perform their obligations under this Contract shall not be deemed to be a Force Majeure Event for the purposes of Clause 18 of this Contract.

26 Dispute Resolution

- 26.1 26.1 If a Dispute arises in respect of this Contract then the procedure set out in this Clause 26 shall apply.
- 26.2 In the event of a Dispute, either party shall serve on the other party a Dispute Notice, together with any relevant supporting documentation.
- 26.3 Following the service of any Dispute Notice pursuant to Clause 26.1, [REDACTED], Assistant Contract Manager of the Customer and [REDACTED], Research Account Manager of the Supplier shall use reasonable endeavours to resolve the Dispute, in good faith.
- 26.4 If [REDACTED], Assistant Contract Manager] of the Customer and [REDACTED], Research Account Manager of the Supplier are for whatever reason unable to resolve the Dispute within 30 (thirty) days of service of the relevant Dispute Notice, the Dispute shall be referred to Daniel Letourneau, Despatch Manager of the Customer and Gemma Robinson, Sales Manager – Special Gases of the Supplier who shall use reasonable endeavours to resolve the Dispute, in good faith.
- 26.5 If Daniel Letourneau, Despatch Manager of the Customer and Gemma Robinson, Sales Manager – Special Gases of the Supplier are for whatever reason unable to resolve the Dispute within 30 (thirty) days of the Dispute being referred to them pursuant to Clause 26.3, the parties will seek to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. The Mediator shall be nominated by CEDR Solve, unless otherwise agreed (in writing) between the parties. To initiate the mediation, a party must provide a written notice (ADR Notice) to the other party to the Dispute, requesting mediation. A copy of any such ADR Notice must be sent to CEDR Solve. The mediation will not start later than 15 (fifteen) after the date of the ADR Notice and the party providing the ADR Notice shall be responsible for all costs associated with the provision of such ADR Notice (subject to any agreement made between the parties in relation to costs associated with such mediation).
- 26.6 In the event that:
- 26.6.1 the Dispute is not resolved within 30 (thirty) days after the service of an ADR Notice; or
- 26.6.2 either party fails to participate or fails to continue to participate in the mediation before the expiry of such 30 (thirty) days; or
- 26.6.3 the mediation terminates before the expiry of such 30 (thirty) days,
- the Dispute shall be referred to the Courts of England and Wales in accordance with Clause 34 of this Contract.
- 26.7 No party may commence any court proceedings under Clause 34 of this Contract in relation to the whole or any part of a Dispute until 60 (sixty) days after the service of the ADR notice (provided that the right to issue proceedings is not prejudiced by a delay).

27 Records and Audit Access

- 27.1 The Supplier shall keep and maintain until 6 (six) years after the date of the end of the Term, full and accurate records and accounts of the operation of this Contract including but not limited to the Goods and Services provided under it in accordance with good accountancy practice.
- 27.2 On the reasonable written request of, and subject to reasonable notice having been given by, the Customer, during the Term and for a period of 6 (six) years after the Contract End Date or the expiry of the Term (whichever is later) (the Relevant Period), the Supplier shall provide such records and accounts which directly relate to this Contract to the Customer and/or the auditor and/or any statutory body entitled by Law. The Customer may not make more than one request in any 12 (twelve) month period during the Relevant Period.
- 27.3 Subject the provisions of Clause 14, the Supplier shall on at least 10 (ten) business days' written notice provide the auditor with all reasonable co-operation and assistance in relation to each audit, including:
- (a) providing copies of such records and accounts directly relating to this Contract, reasonably requested by the auditor, to the extent that such records and accounts fall within scope of the audit;
 - (b) reasonable access to sites controlled by the Supplier and to equipment and materials used in the provision of the Goods and Services, provided that the auditor shall comply with the Supplier's then current site safety and security rules; and
 - (c) access to the Supplier's Personnel.
- 27.4 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 27 unless the audit reveals a material breach by the Supplier of good accountancy practice and/or this Contract, in which case the Supplier shall reimburse the Customer for the reasonable costs it incurs in relation to the audit.

28 Compliance with Anti-Slavery and Human Trafficking Laws and Policies

- 28.1 In performing its obligations under this Contract the Supplier shall comply with all applicable labour, anti-slavery and human trafficking legislation and regulations in force from time to time in the United Kingdom, including but not limited to the Modern Slavery Act 2015 ("Anti-Slavery Laws").
- 28.2 The Supplier represents and warrants that, as at the date of this Contract, neither the Supplier nor any of its officers, employees or agents have been convicted of any offence involving slavery and/or human trafficking, nor have they been or are the subject of an 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/or human trafficking whether pursuant to the Anti-Slavery Laws or any other relevant legislation in force from time to time.
- 28.3 The Supplier shall, throughout the Term, use all commercially reasonable endeavours to include, in all of its contracts with any of its subcontractors of any tier in the supply chain involved in the production or provision of the Goods and Services:
- 28.3.1 a provision obliging the relevant subcontractor to provide the Goods and Services specified in the relevant subcontract in accordance with Anti-Slavery Laws;

28.3.2 and provisions (to take effect upon a breach by the subcontractor of its obligation to provide the Goods and Services under the relevant subcontract in accordance with Anti-Slavery Laws) which provide that:

(a) if a subcontractor's failure to comply with Anti-Slavery Laws has occurred more than once in any 6 (six) month period, the Supplier must serve a written notice on the subcontractor;

(i) specifying that the notice is a formal warning notice;

(ii) giving reasonable details of the subcontractor's breach; and

(iii) stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of the Subcontract;

(b) if, following service of a warning notice under Clause 28.3.2 0, the breach specified has continued beyond 12 (fourteen) days or has recurred more than once within a 6 (six) month period after the date of the notice then the Supplier must serve another written notice on the subcontractor:

(ii) specifying that it is a final warning notice;

(ii) stating that the breach specified has been the subject of a warning notice served within the 12 (twelve) month period prior to the date of service of the final warning notice;

(iii) and stating that if the breach continues or recurs again within the 6 (six) month period after the date of the final warning notice, the subcontract may be terminated; and

(c) where a breach continues or recurs pursuant to Clause 28.3.20, the Supplier may terminate the subcontract by 7 (seven) days' notice in writing to the subcontractor, or provisions that are equivalent to and no less onerous than those set out above.

29 Not Used

30 Contracts (Rights of Third Parties) Act 1999

Nothing in this Contract shall confer or purport to confer on any third party any benefit or the right to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

31 Severability

If any part of this Contract becomes, or is determined by any court or tribunal to be, illegal or unenforceable, the remaining provisions shall remain in full force and effect.

32 Liability

The parties hereby agree that the Supplier shall remain liable under this Contract for 6 (six) years after the date of the end of the Term.

33 Counterparts

This Contract may be executed in one or more counterparts. Any single counterpart or set of counterparts executed, in either case, by all the parties shall constitute a full original of this Contract for all purposes.

34 Governing Law and Jurisdiction

- 34.1 The terms and conditions of this Contract and any Dispute shall be governed by the laws of England and Wales.
- 34.2 The parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute.

35 Waiver

- 35.1 A party's failure or delay to exercise a power or right under this Contract does not operate as a waiver of that power or right.
- 35.2 A waiver of a power or right will only be effective:
 - 35.2.1 if it is in writing and signed by the party who has the benefit of the power or right being waived; and
 - 35.2.2 in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- 35.3 Communications between the parties made before the date of the Contract which are not expressly contained within the Contract shall not be deemed to be incorporated into the Contract.
- 35.4 Notwithstanding any other provision of the Contract, the terms approval or comment or consent when used in the context of any approval, comment or consent to be given by a party shall have the meaning acceptance of general principles only and no such approval, comment or consent shall diminish or relieve the other party from any of its obligations or responsibilities under or in connection with the Contract.

36 Amendments to this Contract

- 36.1 An amendment or variation to this Contract shall not be effective or binding unless it is in writing and signed by the Supplier and the Customer.
- 36.2 No amendment or variation to this Contract shall be permitted which could or does amount to a substantial variation for the purposes of regulation 72 of PCR (which the Customer shall determine in its sole discretion).
- 36.3 For the avoidance of doubt, the Customer shall be entitled to refuse any proposed amendment or variation to this Contract which does or could amount to a substantial variation for the purposes of regulation 72 of PCR.

This document has been entered into by the parties or their duly authorised representatives on the date set out at the beginning of this document.

Authorized signatures of Customer and Supplier is on the Order Form.

Schedule 1: Anti-bribery and Corruption

1. The term **Prohibited Act** means
 - (a) directly or indirectly offering, promising or giving any person working for or engaged by the Customer a financial or other advantage of any kind to:
 - (i) induce that person to improperly perform a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
 - (b) directly or indirectly requesting, agreeing to receive or accepting any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
 - (c) committing any offence;
 - (i) under the Bribery Act 2010;
 - (ii) under Law creating offences in respect of fraudulent acts;
 - (iii) at common law, in respect of fraudulent acts; or
 - (iv) at common law, in respect of fraudulent acts relating to this Contract or any other contract with the Customer or any other public body; or
 - (d) defrauding, attempting to defraud or conspiring to defraud the Customer.
2. The Supplier:
 - (a) shall not, and shall procure that the Supplier's Personnel shall not, in connection with Contract, commit a Prohibited Act;
 - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that any agreement has been reached to that effect, in connection with the execution of this Contract; and
 - (c) warrants that in entering into this Contract it has not committed any Prohibited Act (as declared by the Supplier pursuant to the Original Tender Process in accordance with regulation 57 of the PCR).
3. The Supplier shall:
 - (a) if requested in writing, provide the Customer, at the Customer's reasonable cost, to enable the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
 - (b) within 20 (twenty) days of the date of this Contract, and annually thereafter, certify in writing to the Customer compliance with this Schedule 1 by the Supplier and all persons associated with it or any other persons who are supplying the Goods and Services in connection with this Contract. The Supplier shall provide any such supporting evidence of compliance with this Schedule 1 as the Customer may reasonably request

4. The Supplier shall put in place and maintain an anti-bribery policy (a copy of which shall be provided to the Customer within 20 (twenty) days of the date of this Contract) which shall, as a minimum, prevent any Personnel from committing a Prohibited Act and shall enforce it where appropriate.
5. If at any time any breach of paragraph 2 above is suspected or known, the Supplier must notify the Customer immediately with the details of any such breach to follow in writing as soon as reasonably practicable.
6. If the Supplier notifies the Customer that it suspects or knows that there may be a breach of this Schedule 1, the Supplier will respond promptly to all of the Customer's enquiries in relation to any such suspected or actual breach and will co-operate at all times with any investigation, and permit the Customer access to and audit of any books, records and any other relevant documents. The obligation under this paragraph shall continue for 7 (seven) years following the expiry or termination of this Contract.
7. The Customer may terminate this Contract by written notice with immediate effect if the Supplier, its Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches paragraph 2 of this Schedule 1. Any such termination shall be without prejudice to any right or remedy which has already accrued or which subsequently accrues to the Customer.
8. Any notice provided by the Customer pursuant to paragraph 7 must specify:
 - (c) the nature of the Prohibited Act;
 - (d) the identity of the party who the Customer believes has committed the Prohibited Act; and
 - (e) the date on which this Contract will terminate in accordance with the applicable provisions of this Schedule 1.
9. Notwithstanding Clause 26 (Dispute Resolution) of this Contract, the Customer shall determine any Dispute relating to the interpretation of this Schedule 1 and/or the amount or value of any gift, consideration or commission and any such determination by the Customer shall be final and binding upon the parties.

Schedule 2: Participating Consortia

1. This Framework is accessible by Members of the following organisations:

- APUC www.apuc-scot.ac.uk
- HEPCW www.hepcw.ac.uk
- LUPC www.lupc.ac.uk
- NEUPC www.neupc.ac.uk
- NWUPC www.nwupc.ac.uk
- SUPC www.supc.ac.uk

2. The following institutions are also granted access to this agreement:

- i. Marine Scotland (<http://www.gov.scot/Topics/marine/contact>)
- ii. Constituent bodies within Research Councils UK (<http://www.rcuk.ac.uk/about/aboutrcs/>) participate as Full Members of LUPC via UK SBS.
- iii. Institutions that are not members of one of the above HE Consortia but serving in education, research or arts and culture and in the public sector may use the final agreement subject to the approval of SUPC and the payment of access fees to the co-ordinating body in respect of their use of the agreement, these normally reported on a quarterly basis by the supplier and invoiced by the co-ordinating body accordingly. These fees may be waived at the discretion of SUPC.
- iv. TUCO Purchasing Ltd, whose registered office is 20 Dale Street, Manchester M1 1EZ and a number of associated bodies additionally participate and have full access to Lot 10 for the supply of single and blended gas used in the dispensing of drinks ('bar gas'). This individual Lot within this Tender includes the following participants in addition to the Participating Institutions as currently defined within similar EU-tendered agreements where TUCO Purchasing Ltd is the co-ordinating body:
 - TUCO Purchasing Ltd members - <http://www.tuco.org/buy/clients>
 - Further Education sectors via Crescent Purchasing Consortium (currently 170 colleges throughout the UK) and any other member of CPC - <http://www.thecpc.ac.uk/>
 - Conwy CBC, Denbighshire CC, Flintshire CC, Wrexham CBC, Sefton Council, Halton BC, Cheshire West and Chester Council, South Ribble Borough Council, Liverpool City Council, Wirral BC, Rochdale MBC, Northumberland CC and any other Local Authorities http://www.direct.gov.uk/en/D11/Directories/Localcouncils/AToZOfLocalCouncils/DG_A-Z_LG
 - Education Establishments in England and Wales, maintained by the Department for Children, Schools and Families including Schools, Universities and Colleges
<http://www.edubase.gov.uksearchxhtml;4767F89630A039E98FE593093D577013?page=members>
<http://www.assemblywales.org>
<http://new.wales.gov.uk/?lang=en>

<https://www.sell2wales.co.uk>

- NHS Trusts <http://www.nhs.uk/servicedirectories/Pages/AcuteTrustListing.aspx>
 - Local Authorities and Police Authorities www.apa.police.uk
 - Housing associations, registered social landlords (RSL's), arm's length management organisations. All 700 plus current members of Procurement for Housing (PfH) and any future members, details of current membership for PfH can be found here; [http://www.procurementforhousing.co.uk/membership/membership list](http://www.procurementforhousing.co.uk/membership/membership%20list).
- <http://www.tenantservicesauthority.org/>
- <http://www.ukmsl.com/client/nusconnect/>
- Members of the Hospice Quality Partnership (HQP) www.hospicequalitypartnership.co.uk

Schedule 3: Re-tendering, handover and TUPE

- 1. Not Used

Schedule 4: Data Protection

1. In this Schedule, the following words and expressions shall have the following meanings:

Controller means the person which, alone or jointly with others, determines the purposes and means of the processing of Personal Data;

Data Subject means the identified or identifiable natural living person to whom the Personal Data relates;

Personal Data means any information relating to an identified or identifiable living individual;

Personal Data Breach means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed;

Processor means the person which processes Personal Data on behalf of the Controller;

Processing means any operation or set of operations which is performed on Personal Data, whether or not by automated means and "**Process**", "**Processes**" and "**Processed**" shall be construed accordingly; and

2. The parties acknowledge and agree that where a party processes Personal Data under or in connection with this Contract it alone determines the purposes and means of processing as a Controller.
3. In respect of the Personal Data that a party processes under or in connection with this Contract, it shall:
 - a. comply at all times with its obligations under Data Protection Legislation;
 - b. notify the other party without undue delay after, and in any event within 24 hours of, becoming aware of a Personal Data Breach; and
 - c. assist and co-operate fully with the other to enable it to comply with its obligations under Data Protection Legislation, including in respect of keeping Personal Data secure, dealing with Personal Data Breaches, complying with the rights of Data Subjects and carrying out data protection impact assessments.
4. The Supplier shall make available to the Customer all information necessary to demonstrate the Customer's compliance with the obligations under this Schedule 4 and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer.
5. Each party shall, in connection with the Contract, have established procedures to ensure continued compliance with Law (including the Data Protection Legislation).
6. Either party may, at any time on not less than 30 working days' notice, revise this Schedule 4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.
7. The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 working days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
8. Each party warrants that it shall:
 - a. Process the Personal Data in compliance with Law (including the Data Protection Legislation); and

- b. take appropriate technical and organisational measures against Personal Data Breaches occurring.

Schedule 5: Key Performance Indicators

1. The Call-Off KPIs are as set out in the Order Form.
2. The parties acknowledge the provisions of Schedule 7 of the Framework Agreement.
3. The parties agree that the Customer may amend the Call-Off KPIs during the term as agreed, in writing, with the Supplier.
4. The Supplier shall establish suitable processes to ensure it can monitor its performance of the provision of the Goods and Services in accordance with the Call-Off KPIs under this Contract and that it is able to report on the same to the Customer.
5. At the end of each quarter during the Term, the Supplier shall provide the Customer (and, pursuant to the Framework Agreement, the Authority) with a report containing sufficient data setting out the Supplier's performance of the Call-Off KPIs. The Supplier acknowledges that the Customer will review such reports to determine the Supplier's effectiveness and efficiency of the Supplier's performance of the Call-Off KPIs.
6. If in the Customer's opinion, acting reasonably, the Supplier is not meeting the requirements of the Call-Off KPIs following a review of the reports provided pursuant to paragraph 5 above, the Customer may within 15 (fifteen) days give written notice (an **Initial KPI Warning Notice**) to the Supplier setting out:
 - (a) the matter or matters giving rise to such notice;
 - (b) the date by which such matters must be rectified by; and
 - (c) a reminder of the implications of such notice.Any such Initial KPI Warning Notice shall state on it that is an Initial KPI Warning Notice.
7. If the Supplier (in the Customer's reasonable opinion) fails to adequately address the matter or matters set out in the Initial KPI Warning Notice by the date contained in such Initial KPI Warning Notice, the Customer may (at its discretion) issue a further written notice (a **Final KPI Warning Notice**) to the Supplier setting out:
 - (a) the matter or matters continuing rise to such notice;
 - (b) the date by which such matters must be rectified by; and
 - (c) a reminder of the implications of such notice.Any such Final KPI Warning Notice shall state on it that is a Final KPI Warning Notice.
8. Without prejudice to any other rights under this Contract if the Supplier (in the Customer's reasonable opinion) fails to adequately address the matter or matters set out in the Final KPI Warning Notice by the date contained in such Final KPI Warning Notice, the Customer may terminate this Contract by giving not less than 7 (seven) days written notice to the Supplier.
9. In the event that the Framework Agreement is terminated in accordance with Schedule 7 of the Framework Agreement, the Supplier acknowledges that the Customer may terminate this Contract.

Appendix B

Customer Laboratory Site Address

Bury St Edmunds

APHA Veterinary Investigation
Centre
Rougham Hill
Bury St Edmunds
Suffolk IP33 2RX

Carmarthen

APHA Veterinary Investigation
Centre Job's Well Road
Johnston Carmarthen
Carmarthenshire SA31 3EZ

Lasswade

APHA Lasswade Pentlands
Science Park Bush Loan
Penicuik Midlothian EH26 0PZ

Newcastle

APHA Veterinary Investigation
Centre Whitley Road
Long Benton
Newcastle
upon Tyne
NE12 9SE

Penrith

APHA Veterinary Investigation Centre
Merrythought
Calthwaite
Penrith
Cumbria
CA11 9RR

Sand Hutton

APHA Sand Hutton
National Agri-Food Innovation Campus
Sand Hutton
York
YO41 1LZ

Shrewsbury

APHA Veterinary Investigation Centre
Kendal Road
Harlscott
Shrewsbury
Shropshire
SY1 4HD

Starcross

APHA Veterinary Investigation Centre
Staplake Mount
Starcross
Exeter
EX6 8PE

Sutton Bonington

APHA Sutton Bonington,
Quality Assurance Unit
The Elms,

College Road,
Sutton Bonington
Loughborough
LE12 5RB

Thirsk

APHA Veterinary Investigation Centre
West House
Station Road
Thirsk
North Yorkshire
YO7 1PZ

Weybridge

APHA Weybridge (Central Stores)
New Haw
Addlestone
Surrey
KT15 3NB

Woodchester Park

APHA Woodchester Park,
National Wildlife Management Centre,
Tinkley Lane,
Nympsfield,
Stonehouse,
GL10 3UJ