



Department
for Environment
Food & Rural Affairs

T: 03459 335577
helpline@defra.gov.uk
www.gov.uk/defra

SalesOut
T/A Information Resource (UK) Ltd
54 Portland Place
London
W1B 1DY

Your ref: ecm_60501
Our ref: 32151
Date: 12 March 2021

Award of contract for the provision of Response to Covid-19: A weekly supply of sales data from UK wholesalers

Following your proposal for the provision of a Response to Covid-19: A weekly supply of sales data from UK wholesalers to Defra we are pleased to award this contract to you.

This letter (Award Letter) and its Annexes set out the terms of the contract between Defra as the Customer and SalesOut as the Supplier for the provision of the Services. Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions of contract set out in Annex 1 to this Award Letter (the “**Conditions**”). In the event of any conflict between this Award Letter and the Conditions, this Award Letter shall prevail. Please do not attach any Supplier terms and conditions to this Award Letter as they will not be accepted by the Customer and may delay the conclusion of the Agreement.

For the purposes of the Agreement, the Customer and the Supplier agree as follows:

1. The Services shall be performed at the Supplier’s premises as above.
2. The charges for the Services shall be as set out in Annex 2.
3. The specification of the Services to be supplied is as set out in Annex 3.
4. The Term shall commence on 01/03/2021 and the Expiry Date shall 31/07/2021 unless extended or subject to early termination.

5. The address for notices of the Parties are:

Customer	Supplier
Defra Seacole Building 2 Marsham Street London SW1P 4DF [REDACTED] [REDACTED]	SalesOut T/A Information Resource (UK) Ltd 54 Portland Place London WB1 1DY [REDACTED] [REDACTED]

6. The following persons are Key Personnel for the purposes of the Agreement:

Name	Title
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

7. The Customer may require the Supplier to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Services, relevant to the work of the Customer, or is of a type otherwise advised by the Customer (each such conviction a “**Relevant Conviction**”), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

Payment

Our preference is for all invoices to be sent electronically, quoting a valid purchase order number (PO Number), to Accounts-Payable.def@govl.sscl.com. to Shared Services Connected Limited, PO Box 790, Phoenix House, Celtic Springs Business Park, Newport, Gwent, NP10 8FZ. Within 10 working days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Customer contact (i.e. Contract Manager). Non-compliant

invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to Accounts-Payable.def@govl.sscl.com or by telephone 0845 603 7262 between 09:00-17:00 Monday to Friday.

Liaison

For general liaison your contact will continue to be [REDACTED]
[REDACTED] We thank you for your co-operation to date and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the Services. Defra would be grateful if you could arrange the contract to be executed, by way of electronic signature, on behalf of SalesOut and within 7 days by 19th March 2021.
Yours faithfully,

[REDACTED]

Senior Category Manager
Defra group Commercial

[REDACTED]

[REDACTED]

Execution of this award notification letter is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Contract will be formed on the date on which both Parties communicate acceptance of its terms on the Customer's eSourcing System.



Department
for Environment
Food & Rural Affairs

Conditions of Contract

**Project_32151 - Response to Covid-19: A weekly
supply of sales data from UK wholesalers**

February 2021

Annex 1

Terms and Conditions of Contract for Services

1 Interpretation

1.1 In these terms and conditions:

“Agreement”	means the contract between (i) the Customer acting as part of the Crown and (ii) the Supplier constituted by the Supplier’s countersignature of the Award Letter and includes the Award Letter and Annexes;
“Award Letter”	means the letter from the Customer to the Supplier printed above these terms and conditions;
“Central Government Body”	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;
“Charges”	means the charges for the Services as specified in the Award Letter;
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“Customer”	means the person named as Customer in the Award Letter;
“DPA”	Means the Data protection act GDPR as transposed into United Kingdom national law by operation of section 3 of the European union (withdrawal) act 2018 and as amended by the data protection. Privacy and electronic commination’s (Amendments etc.) (EU Exit) Regulations 2019;

“Expiry Date”	means the date for expiry of the Agreement as set out in the Award Letter;
“FOIA”	means the Freedom of Information Act 2000;
“Information”	has the meaning given under section 84 of the FOIA;
“Key Personnel”	means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the Supplier in writing;
“Party”	means the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them;
“Personal Data”	means personal data (as defined in the DPA) which is processed by the Supplier or any Staff on behalf of the Customer pursuant to or in connection with this Agreement;
“Purchase Order Number”	means the Customer’s unique number relating to the supply of the Services;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Services”	means the services to be supplied by the Supplier to the Customer under the Agreement;
“Specification”	means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer’s procedures for the vetting of personnel as provided to the Supplier from time to time;
“Supplier”	means the person named as Supplier in the Award Letter;
“Term”	means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement;

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

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

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.

2 Basis of Agreement

- 2.1 The Award Letter constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the Supplier on receipt by the Customer of a copy of the Award Letter countersigned by the Supplier within **30** days of the date of the Award Letter.

3 Supply of Services

- 3.1 In consideration of the Customer’s agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Supplier shall:
 - 3.2.1 co-operate with the Customer in all matters relating to the Services and comply with all reasonable Customer’s instructions;
 - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier’s industry, profession or trade;
 - 3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier’s obligations are fulfilled in accordance with the Agreement;
 - 3.2.4 ensure that the Services shall materially conform with all descriptions and specifications set out in the Specification, notwithstanding anything contained in the agreement, re-performance of any materially non-compliant service or work shall be the sole remedy for breach of this clause;
 - 3.2.5 comply with all applicable laws; and
 - 3.2.6 provide all relevant equipment and tools as are required to provide the Services.

- 3.3 The Customer may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.

4 Term

- 4.1 The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Customer may extend the Agreement for a period of up to 6 months by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

5 Charges, Payment and Recovery of Sums Due

- 5.1 The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 5.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 5.3 The Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.4 In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance. The Customer shall notify the Supplier before any amounts are withheld or reduced so that Supplier is able to reperform any materially non-compliant service.
- 5.5 If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed, in this case 14 days from the date of the invoice.
- 5.6 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.7 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.8 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:

- 5.8.1 provisions having the same effects as clauses 5.3 to 5.7 of this Agreement; and
- 5.8.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.8 of this Agreement.
- 5.8.3 In this clause 5.8, “sub-contract” means a contract between two or more suppliers, at any stage of remoteness from the Customer in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

5.9 N/A

6 Premises and equipment

- 6.1 If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer’s premises by the Supplier or the Staff shall be at the Supplier’s risk.
- 6.2 If the Supplier supplies all or any of the Services at or from the Customer’s premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer’s premises, remove the Supplier’s plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer’s premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer’s premises or any objects contained on the Customer’s premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 6.3 N/A
- 6.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer’s premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer’s security requirements.
- 6.5 N/A
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 N/A

7 Staff and Key Personnel

- 7.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
 - 7.1.1 refuse admission to the relevant person(s) to the Customer’s premises;
 - 7.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 7.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,

and the Supplier shall comply with any such notice.

7.2 The Supplier shall:

- 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
- 7.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
- 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

8 Assignment and sub-contracting

8.1 The Supplier shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. Such written consent of the Customer must not be unreasonably withheld, delayed, or conditioned. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own. In the case of an internal business restructuring of the Supplier then such assignment or novation should be allowed without prior consent from Customer, but with advance notice to Customer.

8.2 N/A

8.3 The Customer shall not without the written consent of the Supplier assign, sub-contract, novate or in any way dispose of the benefit and/or the burden of the Agreement or any part of the Agreement. Such written consent of the Supplier must not be unreasonably withheld, delayed or conditioned. The Supplier may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Customer shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own. In the case of an internal business restructuring of the Customer, such assignment or novation shall be allowed without prior consent from Supplier, but with advance notice to Supplier, provided such incoming party is not a competitor of the Supplier and first agrees in writing to be bound by all of the applicable terms and conditions contained herein.

9 Intellectual Property Rights

9.1 All intellectual property rights in any materials provided by the Customer to the Supplier for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Supplier a limited, non-exclusive and non-transferable licence to use such materials as required until termination or expiry

of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.

9.2 All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Supplier.

9.3 The Supplier hereby grants the Customer:

9.3.1 a limited, non-transferable, revocable (for breach), non-exclusive, restricted-use right and licence to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and;

9.3.2 a limited, non-transferable, revocable (for breach) restricted-use right and non-exclusive licence to use:

(a) any intellectual property rights vested in or licensed to the Supplier on the date of the Agreement; and

(b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

9.3.3 The Customer agrees that such access, license and use shall be for Customer's own Internal Business Purposes only. For purposes of this Agreement, Customer's "Internal Business Purposes" shall mean internal government research purposes only within the Defra team reference COVID-19 research. Customer agrees not to use the results of the Services in any manner that could or does distort or misrepresent the data supplied by Supplier.

9.4 Supplier agrees to defend, indemnify and hold Customer harmless from any and all claims, suits, damages, costs and/or other liabilities (including reasonable legal fees) incurred or suffered by Customer by reason of any actual infringement of any trade marks registered in, or copyrights existing in, the jurisdiction where Supplier is performing services, based on the permitted use of the Services and Supplier intellectual property. Supplier shall have no liability for any claim of infringement based on:

(a) the use of any version of the software other than the then-latest release of software from Supplier, if such infringement could have been avoided by the use of the latest release made available to Customer;

(b) the use or combination of the software, data, or other materials provided by Supplier under this Agreement with software, information, or other materials not provided by Supplier under this Agreement; or

(c) the modification of the software, data or other materials provided by Supplier, if such infringement could have been avoided by not modifying the Supplier-provided software, data or other materials.

If the Supplier intellectual property has become (or in Supplier' reasonable judgement is likely to become) the subject of an infringement claim: Supplier shall, at its option and expense,

(a) procure for Customer the right to make continued use of it ,

(b) replace or modify the Supplier intellectual property with substantially similar software or technology, or

(c) if (a) and (b) above are not commercially reasonable to Supplier, then Supplier may at its sole option terminate the applicable Services and/or Customer's use of the Supplier intellectual property without further liability by Supplier provided that Supplier will refund any pre-paid fees, and Customer will be not be responsible for early termination charges.

This paragraph states the entire liability of Supplier with respect to infringement of patents, copyrights, trademarks or other proprietary rights by the Services and Supplier intellectual property.

9.5: Customer will defend, indemnify and hold Supplier harmless from any and all third party claims, losses, suits, damages, costs, liabilities and expenses (including, without limitation, reasonable attorneys' fees and court costs) arising from or related to the access, use, disclosure or resale of the Services or Supplier intellectual property in violation of this Agreement.

9.6 A party's obligations to indemnify as described above are subject to the following conditions:

(a) the party seeking indemnification shall promptly notify the indemnifying party in writing of a claim upon receipt of knowledge of it;

(b) the indemnifying party shall have sole discretion and control to defend, compromise, or settle such claim; and (c) the indemnified party shall provide all available information, assistance and cooperation to enable the indemnifying party to do so.

10 Governance and Records

10.1 The Supplier shall:

10.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and

10.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.

10.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Supplier shall on prior thirty (30) days written notice, afford an independent third party auditor (nominated and appointed jointly by the parties), to inspect and audit the books and records of Supplier with respect to the Services for

the sole purpose of evaluating Supplier's compliance with this Agreement. The auditor shall a) only have access to those records reasonably necessary to confirm such compliance in accordance with this Agreement; b) no more than once during the Term of the Agreement and no more than once after the expiry of the Term of the Agreement conduct the audit; and c) only conduct the audit during Supplier's business hours. The cost of audit shall be borne by the Customer.

11 Confidentiality, Transparency and Publicity

11.1 Subject to clause 11.2, each Party shall:

11.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

11.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

11.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

11.2.2 on a confidential basis to its auditors or for the purposes of regulatory requirements;

11.2.3 on a confidential basis, to its professional advisers;

11.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

11.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

11.2.6 where the receiving Party is the Customer:

(a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;

(b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;

(c) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body, provided a) such disclosure is for Customer's own Internal Business Purpose and b) such body agrees to and executes Supplier's standard Third Party Access Agreement (TPAA); or

(d) in accordance with clause 12.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 11.

- 11.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Customer to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 11.4 The Supplier shall not and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

12 Freedom of Information

- 12.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
- 12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
 - 12.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
 - 12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 12.2 The Supplier acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

13 Protection of Personal Data and Security of Data

- 13.1 The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.
- 13.2 Notwithstanding the general obligation in clause 13.1, where the Supplier is processing Personal Data for the Customer as a data processor (as defined by the DPA) the Supplier shall:
- 13.2.1 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the DPA;
 - 13.2.2 provide the Customer with such information as the Customer may reasonably request to assist the Supplier in complying with its obligations under the DPA;
 - 13.2.3 promptly notify the Customer of:
 - (a) any breach of the security requirements of the Customer as referred to in clause 13.3; and
 - (b) any request from a data subject regarding the processing of their personal data; and
 - 13.2.4 ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under the DPA.
- 13.3 When handling Customer data (whether or not Personal Data), the Supplier shall ensure the reasonable security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.

14 Liability

- 14.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 14.2 Subject always to clauses 14.3:
- 14.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and
 - 14.2.2 except in the case of claims arising under clause 18.3, in no event shall the Supplier be liable to the Customer for any:
 - (a) loss of profits;
 - (b) loss of business;
 - (c) loss of revenue;
 - (d) loss of or damage to goodwill;
 - (e) loss of savings (whether anticipated or otherwise); and/or

(f) any indirect, special or consequential loss or damage.

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

14.3.1 death or personal injury caused by its negligence or that of its Staff;

14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

14.3.3 any other matter which, by law, may not be excluded or limited.

14.4 N/A

15 Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

16 Termination

16.1 Either party may terminate the Agreement by giving the other party at least three (3) months prior written notice of termination.

16.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:

16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

16.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

16.2.4 N/A;

16.2.5 breaches any of the provisions of clauses 7.2, 11, 12, 13, and 17;

16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction; or

16.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.

16.3 The Supplier shall notify the Customer as soon as practicable of any change of control or any potential such change of control.

16.4 The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.

- 16.5 Termination or expiry of this Agreement shall not affect any rights or liabilities accrued at the date of termination and any clauses which are intended to continue either expressly or by implication shall continue.
- 16.6 Upon termination or expiry of the Agreement, the Supplier shall:
- 16.6.1 give all reasonable assistance to the Customer and any incoming supplier of the Services; and
 - 16.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.
 - 16.6.3 immediately cease performing all Services in relation to the Agreement and shall be entitled to invoice Customer for any outstanding properly incurred charges in respect of the Services delivered.
 - 16.6.4 as soon as practicable notify Customer to cease use of all Services or data sets delivered pursuant to this Agreement

17 Compliance

- 17.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 17.2 The Supplier shall:
- 17.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and
 - 17.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 17.3 The Supplier shall:
- 17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time; and
 - 17.3.2 take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.
- 17.4 The Supplier shall supply the Services in accordance with the Customer's environmental policy as provided to the Supplier from time to time.
- 17.5 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
- 17.5.1 the Official Secrets Acts 1911 to 1989; and
 - 17.5.2 section 182 of the Finance Act 1989.

18 Prevention of Fraud and Corruption

- 18.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

- 18.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 18.3 If the Supplier or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:
- 18.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
 - 18.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

19 Dispute Resolution

- 19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “**Mediator**”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 19.3 If the Parties fail to appoint a Mediator within one month or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

20 General

- 20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 20.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 20.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing

and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

- 20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 20.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 20.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.
- 20.9 Any warranties (whether express, implied or statutory) arising in the course of dealing, usage or trade practice are excluded unless expressly specified to the contrary in the Agreement. In addition, Customer assumes total responsibility for Customer's use of the services provided by Supplier and for conclusions drawn from such use and Supplier shall not be liable for any loss or damage suffered by any third party as a result of Customer's use of the services provided by Supplier.

21 Notices

- 21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 21.3 Notices under clauses 15 (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.

22 Governing Law and Jurisdiction

The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

Appendix 1

PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. This Schedule shall be completed by the Authority, who may take account of the view of the Contractor, however the final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.
2. The contact details of the Authority Data Protection Officer are:
3. The contact details of the Contractor Data Protection Officer are:
4. The Contractor shall comply with any further written instructions with respect to processing by the Authority.
5. Any such further instructions shall be incorporated into this Schedule.

Data Processing descriptor	Narrative
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor in accordance with Clause 13.
Subject matter of the processing	The processing is needed in order to ensure that the Processor can effectively deliver the services required by the contract.
Duration of the processing	Duration of the contract: 08/02/2021 - 30/07/2021
Nature and purposes of the processing	The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.
Type of Personal Data	Employee email address
Categories of Data Subject	Staff (including volunteers, agents, and temporary workers),

Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	The Supplier will store relevant personal data in an electronic file, specific to the programme, in its central document management system which is stored, backed up and supported within the UK. Some hard copy documentation may also be stored in a physical matter file in the UK. Relevant personal data will be retained in accordance with the Supplier's Physical Records Retention Policy, which specifies a standard retention period for 6 years after termination or expiry of the Contract.
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In the event that personal data is identified, the Authority requires that a Fair Processing Notice (or equivalent) is completed and forwarded to the Authority for its records.

Annex 2 – Charges

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

Excel Market Access:

Value Measure	Calculations	Timeframes	Market Sector	Market Sub Sector	Customer Type	Regions	Product levels
Sales (£)	Sales Per Case	3 Years back data	Foodservice	Education	Contract	TV Regions	Departments (25)
Cases	Sales Per Unit	Year	Retail	Workplace	Independent	ONS Regions	Category (135)
Units	Sales Per Customer	Month	Other	Forecourts			Sub-Category (624)
Ltr's	Units per customers	Week		Healthcare			
Volume	Cases Per Customer	Quarter		General Grocers			

KG's							



Total cost - £30,000

All other options are restricted in terms of data accessible; original pricing table below.

Service	Frequency	Product Level	Customer Level	Measures	Time	Bespoke Request	Delivery Format	Price Per Delivery	Project Total Cost (Nov – Mar 21)
Market Read Reports		Department	Market Sector 2	Sales Index Sales % Change		No – Standard Format	PDF	Free	
Insights Reporting		Department Category	Market Sector 1 Sector 2	Sales (£) Cases Customer Counts		Yes	PowerPoint (No Raw Data)		
Insight Reporting		Department Category	Market Sector 1 Sector 2	Sales (£) Cases Customer Counts		Yes	PowerPoint (No Raw Data)		
Aggregated FTP Files (Raw Data)		Department Category Sub Category	Market Sector 1 Sector 2	Sales (£) Cases		No	SFTP		
Cube Connection (Data)		Department Category Sub Category	Market Sector 1 Sector 2 Regions (TV / ONS) County Town	Sales Cases Customer Counts Avg. Sales per customer Avg. Sales Per Case Avg. Units per Customer Rate Of Sale		Yes	Excel Cube Connection		

Annex 3 – Specification

Defra and other Government Departments across Whitehall are monitoring closely the potential impacts of Covid-19 on the food and drink wholesale sector, through ongoing engagement with industry. Defra have been looking ahead to assess long-term risks to public sector food provision and the financial viability of the wholesale sector and have been collaborating with industry to collect evidence on this.

The sector, particularly the foodservice wholesale sector, is economically fragile following the first Covid-19 peak and accompanying restrictions. The further restrictions, from the 5 November until 2 December and the second lockdown, are extremely concerning for sector. Outstanding debt will increase, as customers in hospitality will no longer proceed with payment for products that have already been ordered. Wholesalers will have a lot of stock in hand which is difficult to repurpose. Some products also on their way and have been shipped and will arrive to no demand. This could create pressure on the sector which might not have storage capacity to deal with commodity surplus.

Objectives

In this setting it is critical for Defra to support the sector by increasing its understanding of operational and logistical changes taking place to inform decisions on:

- What parts of the industry may need help or support;
- How has the market suffered, what does sales data show and distributional impacts across company types;
- What has been the impact of restrictions in different parts of the wholesale industry and different regions;

Better understanding the impact of Covid-19 on the wholesale industry in this fast-moving environment will help Government to be better prepared for action by enabling better planning, adjust policy action and generally getting ahead of any supply chain issues and risks to the public sector food provision.

At present there is a significant gap in the evidence base with regards to real world impacts that Covid-19 is imposing on the wholesale sector. This data will allow Defra to conduct an in-depth analysis of these impacts on the sector, and: Establish the baseline - what “normal” looks like in the wholesale sector- as well as impact of Covid-9 on sales. Data will potentially be of use to infer impacts in other parts of the supply chain (farmers share of retail prices)

Deliverables

Defra will receive datasets outlining relevant information on wholesale sector sales per case, sales per unit, sales per customer, units per customers and cases per customer split by:

- Market sector (foodservice retail other)
- Market subsector (education, workplace, forecourts, healthcare, general grocers)

- Customer type (contract, independent)
- Region
- Product Level

In addition, Defra will receive three years of historic data, to support the build-up of the baseline.