

APPENDIX B VARIATION FORM



PROJECT TITLE: FS99999 Delivery of Meat Official Controls in Approved Establishments in England & Wales Lots 1-6

DATE:

VARIATION No: 02

BETWEEN:

The Food Standards Agency (hereinafter called "the Authority") & Eville & Jones (GB) Ltd (hereinafter called "the Supplier")

1. The Contract is varied as follows:

The following changes apply: -

1. GDPR

The following clauses are varied to reflect new data protection legislation, which came into force during May 2018, and aims to protect the privacy of all EU citizens and prevent data breaches.

Schedule 1: Interpretation – This clause shall include the additional 'GDPR Clause Definitions' at Annex R.

Clause 12 shall be amended to the following

12. Data protection

12.1 Except to the extent that this Clause provides otherwise, the Authority and the Supplier acknowledge that, for the purposes of the Data Protection Requirements, they act as joint controllers, and that the provisions of this Clause shall, unless the context otherwise requires, amount to the arrangement between them required by the Data Protection Requirements.

12.2 The Authority and the Supplier each acknowledge and confirm that they are data controllers established in the European Union and that the data protection requirements impose legal duties (the "Duties") upon them.

The Authority and Supplier agree that:

12.2.1 these Duties are several duties of the Authority and Supplier, rather than joint, duties;

12.2.2. each party shall use its reasonable endeavours to assist the other party to respond to requests made directly of that other party by data subjects;

12.2.3 neither party shall knowingly act, or fail to act, in such a way as to prevent compliance with the Duties by the other party or make such compliance materially more onerous; and

12.2.4 they shall inform those data subjects who are common data subjects to the parties, of the existence of, and a simple explanation of, the contents of this clause.

12.3 Where, and solely to the extent that, the activities of either party create a situation in which one party acts as a data processor on behalf of the other, the parties agree as follows:

12.3.1 that the subject matter, nature and purpose of the processing is wholly or mainly connected with the Services;

12.3.2 that the processing shall continue for so long as either party enjoys rights or is subject to obligations under this Contract;

12.3.3 that the types of personal data being processed may vary, but may include (without limitation) names, dates of birth, addresses (both physical and electronic mail addresses), on-line identifiers, such as cookies and IP addresses, patterns of consumption of goods and services (particularly those connected with food and animal feedingstuffs), records of personal opinions and preferences, images and audio-visual recordings, browsing histories and details of personal contacts;

12.3.4 that the categories of data subject may vary from time to time but will include (without limitation) individuals whose expertise, occupation, views, experience, qualifications, geographic location, personal contacts, interests and patterns of consumption are relevant to the discharge by the Authority of its statutory functions;

12.3.5 that the party acting as data processor does so only in accordance with documented instructions provided to it by the other party or, where those instructions are inconsistent with the Data Protection Requirements, in accordance with the Data Protection Requirements;

12.3.6 that persons engaged by the party acting as data processor are bound by conditions of confidentiality as regards the personal data which comes into such persons' possession;

12.3.7 that the party acting as data processor shall take all appropriate technical and organisation measures necessary to ensure that the personal data is processed fairly and lawfully and in accordance with the Data

Protection Requirements and that data subjects can exercise the rights conferred upon them by the Data Protection Requirements;

12.3.8 that the party acting as data processor will not engage another data processor without the prior written agreement of the other party;

12.3.9 that the party acting as data processor shall immediately notify the other party as soon as the party acting as data processor becomes aware of any loss or corruption of, or unauthorised use of or access to, personal data, and provide the other party with such assistance as is required to allow that other party to meet its obligations to notify any breaches of the Data Protection Requirements to the appropriate authorities and to data subjects;

12.3.10 that the party acting as data processor shall not transfer personal data outside the European Union without the prior written consent of the other party;

12.3.11 that (unless the general law requires otherwise) the party acting as data processor shall, at the direction of the other party, delete or return to that other party all personal data processed on behalf of that other party under or pursuant to this Contract;

12.3.12 that the party acting as data processor shall provide the other party with all the information necessary to demonstrate compliance with this clause, and shall allow that other party a right of access (on reasonable notice and in normal business hours) to people, premises and systems engaged by the party acting as data processor to interview those persons and inspect those premises and systems to obtain that information, such information being treated as confidential so far as that is consistent with the parties' obligations under the Data Protection Requirements; and

12.3.13 that, where the provisions of this Clause are insufficient to achieve, or fail to allow, either party to meet its respective obligations under the Data Protection Requirements, the parties will amend this Contract to remedy that insufficiency or that failure.

12.4 Unless the context otherwise requires, the expressions used in this Clause carry the meanings they bear in the Data Protection Requirements.

2. Uplift to OV and MHI Hourly Rates

Schedule 4 – Charging has been amended with effect from 01/10/18 to reflect the uplift in the hourly rates as follows:

OV from [REDACTED]

MHI from [REDACTED]

The estimated total cost of this uplift is [REDACTED] in 2018/19 and [REDACTED] in the extension year, 2019/20.

3. Supplementary Payment

A non contractual *ex gratia* payment of [REDACTED] has been agreed to be paid in 2018/19. This will be paid [REDACTED]

[REDACTED] upon agreement between E&J and the FSA of the following:

- Sufficient evidence of [REDACTED] is shown to be flowing through to frontline staff;
- The uplift in charging is having an effect in improving retention and recruitment rates;
- Positive engagement in an efficiencies programme, including identifying opportunities; agreeing timing for pilots and delivery plan.

A non contractual *ex gratia* payment [REDACTED] may be paid in 2019/20. This will be subject to further negotiation and discussion between E&J and the FSA. This will include, but not be limited to:

- Ongoing review of E&Js financial performance;
- E&J engagement and delivery of efficiencies programme;
- Evidence is provided and agreed by both parties that the uplift in charging is having a positive effect on recruitment and retention.

It is anticipated that this negotiation and review will occur ahead of each quarterly review meeting, for discussion and agreement at those meetings.

4. Extension

To extend the contract for a further year with effect from 27/03/19 to 29/03/20.

5. All other terms and conditions remain unchanged.

2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

SIGNED:



Annex R – ADDITIONAL GDPR CLAUSE DEFINITIONS:

Law: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

Contractor Personnel: means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement;

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

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

Controller , Processor , Data Subject , Personal Data , Personal Data Breach , Data Protection Officer take the meaning given in the GDPR;

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

Data Loss Event: means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

Data Protection Impact Assessment: means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

DPA 2018: Data Protection Act 2018;

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

Data Subject Access Request: means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

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

Joint Controllers: where two or more Controllers jointly determine the purposes and means of processing;

Law: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;

LED: Law Enforcement Directive (Directive (EU) 2016/680);

Processor Personnel: means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement;

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

Sub-processor: any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement;

Supplier Personnel: means all directors, officers, employees, agents, consultants and Suppliers of the Supplier and/or of any Sub-Supplier engaged in the performance of its obligations under this agreement;

