



CONTRACT FOR THE PROVISION OF:

Sanitary Surveys & Reviews for Bivalve Mollusc Harvesting In England and Wales

Reference Number: FS115005

This document forms the contract for the Services between;

Food Standards Agency ("Client") having its main or registered office at Clive House, 70 Petty France, London SW1H 9EX

and

Carcinus Ltd ("Supplier"), Eastleigh Business Centre, Wessex House, Upper Market Street, Eastleigh, SO50 9FD

to be effective from 01/04/2020 until 31/03/2023 unless varied by extension.
There is an option to extend this contract for a further 2 years.

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CONTRACT SCHEDULES

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CONTRACT**WHEREAS**

The Food Standards Agency has selected the Supplier to act as a Supplier in the performance of activities connected with the Project described on the title page of this contract, for The Food Standards Agency, the Supplier shall undertake to provide the same on the terms and conditions as set out in this Contract.

Unless and until directed otherwise, nothing in this Contract, shall be construed as giving a guarantee of any remunerative work whatsoever unless or until such work is requested and confirmed by means of a duly authorised Purchase Order.

CROWN REPRESENTATIVES

Where any supplier has been adjudged to fall under the auspices of a “Crown Representative” then any resultant terms and conditions will be subject to, where appropriate, any central contracts and/or negotiation or procurement processes involving such suppliers.

IT IS AGREED AS FOLLOWS:**1. TERMS and CONDITIONS**

1.1 As used in this Contract:

- a) the terms and expressions set out in [Schedule 1](#) shall have the meanings set out therein;
- b) the masculine includes the feminine and the neuter;
- c) the singular includes the plural and vice versa; and
- d) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”.

- 1.2. A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

- 1.3. A reference to any document other than as specified in Clause 1.2 shall be construed as a reference to the document as at the date of execution of this Contract.
- 1.4. Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.5. References to “Clauses” and “Schedules” are, unless otherwise provided, references to the Clauses of and Schedules to this Contract.
- 1.6. Terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in [Schedule 1](#) shall be interpreted in accordance with the common interpretation within the legal services market where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning.
- 1.7. In the event and to the extent only of any conflict or inconsistency in the provisions of the Clauses of this Contract and the provisions of the Schedules, the following order of precedence shall prevail:
 - a) the duly authorised Client Purchase Order;
 - b) the Schedules; and
 - c) this Contract

2. THE SERVICES

- 2.1. This Contract shall govern the overall relationship of the Supplier and the Client with respect to the provision of the Ordered Services.
- 2.2. The Supplier shall provide the Ordered Services and meet its responsibilities and obligations hereunder in accordance with the provisions of [Schedule 2](#) (Ordered Services) and [Schedule 3](#) (Specific Obligations).
- 2.3. Notwithstanding clause 2.1, the Supplier shall perform the Ordered Services to the agreed satisfaction of the Client’s Representative.

- 2.4. The Supplier shall notify the Client as soon as it becomes aware of an event occurring or which it believes is likely to occur which will cause material delay to or materially impede the performance of any Ordered Services or any part thereof and the Supplier shall take all necessary steps consistent with good practice to obviate and/or minimise the delay to the Client.
- 2.5. In the event that the Supplier fails due to its Default to fulfill an obligation by the date specified in any Purchase Order for such fulfillment, the Supplier shall, at the request of the Client and without prejudice to the Client's other rights and remedies, arrange all such additional resources as are necessary to either obviate the delay or to fulfill the said obligation as early as practicable thereafter, at no additional charge to the Client.
- 2.6. In the event that any obligation of the Supplier specified in the Contract is delayed as a result of a Default by the Client, then:
 - a) The date associated with the relevant obligation(s) as specified in the Purchase Order (and the dates similarly associated with any subsequent obligations specified in the Purchase Order) shall be amended by a period of time equal to the period of such Client Default (or such other period as the parties agree in writing); and
 - b) Both parties shall use all reasonable endeavors to obviate and/or mitigate the impact of such delay and to recover any resultant delay to the performance of the Ordered Services.
- 2.7. Nothing in this document, or any Purchase Order, shall have the effect of making the Supplier or any of the Supplier's other employees or agents, the employee of the Client.
- 2.8. Nothing in this document or any Purchase Order shall constitute the parties as partners of each other.

3. STANDARDS AND REGULATIONS

- 3.1. The Supplier shall at all times comply with the Health and Safety provisions, security requirements and personal conduct obligations, of any premises visited and shall exercise all due care and attention when visiting such premises.

- 3.2. The Supplier shall comply with all applicable national and local laws and regulations (including Data Protection Requirements) and obtain and maintain at its own cost throughout the duration of the Contract all the consents (including Data Protection Requirements), licences, permits and approvals which are necessary for the Supplier to perform its duties under this Contract and to enable the provision of the Ordered Services.
- 3.3. Without prejudice to the provisions of Clause 3.2, the Supplier shall ensure that he/she does not work in excess of the working time limits specified in the Working Time Regulations 1998. The Supplier shall maintain appropriate records regarding their working hours. Without prejudice to the obligations under this Clause 3.3, the Supplier shall make available to the Client any information of which it is aware concerning appointments held by an individual concurrently with the obligations of this Contract.
- 3.4. The Supplier shall be responsible for the administration and deduction of any income tax and national insurance in respect of payments made to such individuals, including in respect of any obligations under the Pay As You Earn system. The Supplier will, or procure that its Sub-Suppliers will, account to the appropriate authorities for any income tax, national insurance (if any), VAT and all other liabilities, charges and duties arising out of any payment made to the Supplier under any Purchase Order. The Supplier will indemnify and keep indemnified the Client against any income tax, national insurance (if any), VAT or any other tax liability including any interest, penalties or costs incurred in connection with the same which may at any time be levied, demanded or assessed on the Client by any statutory Agency in respect of payments made to the Supplier.
- 3.5. Nothing in this Contract shall be construed or have effect as constituting any relationship of employer and employee between the Client and the Supplier or its Sub-Suppliers. The Supplier shall indemnify and keep indemnified the Client, its officers, employees and agents against all actions, claims, demands, reasonable costs, charges and reasonable expenses incurred by or made against the Client, its officers, employees or agents arising out of or in connection with any services provided under any Purchase Order asserting that they are an employee of the Client or otherwise alleging any breach of any employment related legislation except where such claim arises as a result of any breach of obligations (whether contractual, statutory, at common law or otherwise).

4. MATERIAL BREACH

4.1. If the Supplier: -

does not, in the reasonable opinion of the Client Representative have the skills and experience required for the role of Supplier; or

fails to follow reasonable instructions given by the Client's Representative in the course of his or her work for the Client; or

presents, in the reasonable opinion of the Client's Representative, a risk to security; or

presents, in the reasonable opinion of the Client's Representative, a risk to the reputation of Her Majesty's Government; or

in the reasonable opinion of the Client's Representative is in some other ways unsuitable for to which he has been assigned pursuant to any Purchase Order;

then the Client may serve a notice on the Supplier requesting that the Supplier immediately cease activities under any Purchase Order.

4.2. Upon receipt of a notice under Clause 4.1 the Supplier shall immediately cease all activities in connection with the Client's instructions.

4.3. Notwithstanding the foregoing, the Client may, at any time, deny access to the Client's or its associates' premises without giving any reason for doing so.

4.4. Any activities performed prior to cessation under 4.1 shall be reimbursed on a *quantum meruit* basis.

5. NON-SOLICITATION

The parties agree that during the term of the appointment as described in any Purchase Order and for a period of twelve (12) months thereafter, they will not, whether directly or indirectly, solicit with a view to offering employment the other party and/or its employees or consultants. In the event that either party breaches this Clause, the defaulting party shall pay to the affected party all unavoidable and reasonable costs incurred by the affected party including but not limited to a sum equal to the gross salary of the employee or the consultant due under any relevant notice. This Clause shall not restrict either party from appointing any person,

whether employee or consultant of the other or not, who has applied in response to an advertisement properly and publicly placed in the normal course of business.

6. PARTIES RESPONSIBILITIES & OBLIGATIONS

The responsibilities for the Parties are set out in [Schedule 2](#) and [Schedule 3](#)

7. CHARGES FOR ORDERED SERVICES

- 7.1. All engagements of the Supplier by the Client, of whatever nature, under the terms of the Agreement must be confirmed by means of a Purchase Order before commencement of the work.
- 7.2. All Charges on any Purchase Order placed under the terms and conditions of this Contract shall utilise the rates as per [Schedule 4](#) as their basis.
- 7.3. In consideration of the performance of the Ordered Services in accordance with this Contract, the Client shall pay the Charges in accordance with the Invoicing Procedure.
- 7.4. Payment shall be made within thirty (30) days of receipt by the Client (at its nominated address for invoices) of a valid invoice (which shall be issued in arrears) from the Supplier.
- 7.5. The Charges are exclusive of Value Added Tax. The Client shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law, from time to time.
- 7.6. "VAT on VAT" Prevention:

The Supplier shall not invoice, nor shall the Client be responsible for, any "VAT on VAT" payment. For the avoidance of doubt, in the event that:

- a) the Supplier has incurred expenditure for goods or services from a third-party provider in respect of which the Supplier is entitled to reimbursement by the Client under the Contract; and
- b) the third-party provider with whom the expenditure has been incurred has charged the Supplier UK VAT on the price of the relevant goods or services;

- 7.7. Interest shall be payable on any late payments under the Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.8. The Supplier shall follow the Purchase Order and Invoice process as set out in Schedule 5. All invoices must reference the duly authorised Purchase Order number. Any invoices which do not reference the Purchase Order number shall be returned as unacceptable.
- 7.9. The Supplier shall continuously indemnify the Client against any liability, including any interest, penalties or reasonable costs incurred which is levied, demanded or assessed on the Client at any time in respect of the Supplier's failure to account for or to pay any Value Added Tax relating to payments made to the Supplier under this Contract. Any amounts due under this Clause 7.8 shall be paid in cleared funds by the Supplier to the relevant Agency not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Client.
- 7.10. The Supplier shall accept the Government Procurement Card (GPC) as a means of payment for Ordered Services where GPC is agreed with the Client to be a suitable means of payment.
- 7.11. The Supplier shall accept payment electronically via the Banks Automated Clearing Service (BACS).

7.12. Euro

In the event that the United Kingdom joins the Economic and Monetary Union (and provided always that the exchange rate for conversion between Sterling and the Euro has been fixed), the Client shall at any time thereafter upon three (3) Months notice to the Supplier, be entitled to require the Supplier at no additional charge to convert the Charges from Sterling into Euros (in accordance with EC Regulation number 1103/97). The Supplier shall thereafter submit valid invoices denominated in Euros.

7.13. Efficiency

The Supplier shall be obliged at all times to seek to improve its efficiency in providing Services to the Client and to review the level of Charges in light of possible efficiency gains. Where such improved efficiency is achieved the Supplier shall propose a reduction in the level of Charges and effect such reduction by agreement with the Client.

8. AMENDMENTS and VARIATIONS TO THIS CONTRACT

No amendment to the provisions of this Contract or Special Terms specified in any Purchase Order shall be effective unless agreed in writing on a Variation form by both parties. Any increases in scope or value shall be the subject of separate negotiation but shall, in any event, be upon no less favourable terms than those contained herein.

9. COMMUNICATIONS

Except as otherwise expressly provided, no communication from one party to the other shall have any validity unless made in writing; nor shall any amendment to any Purchase Order be effected unless made by a duly authorised Purchase Order revision/Contract Variation.

10. TERM AND TERMINATION

- 10.1. This Contract shall take effect from the agreed start date and shall terminate when all requirements are satisfied.
- 10.2. The contract shall be subject to termination for convenience by either party subject to three months notice.
- 10.3. The Client may at any time by notice in writing terminate any Purchase Order, or a part thereof, at 20 days notice without charge. Terminations at less than 20 days notice shall be subject to the Supplier's standard terms and conditions

11. CONSEQUENCES OF TERMINATION AND EXPIRY

- 11.1. In the event of termination in accordance with Clauses 10.2 or 10.3 the Client shall reimburse the Supplier any Charges incurred prior to termination which are wholly, reasonably and properly chargeable by the Supplier in connection with the Contract. The Client shall not be liable to pay any severance payment or compensation to the Supplier for loss of profits suffered as a result of the termination. Determination of such Charges shall be on a *quantum meruit* basis.
- 11.2. Termination, or partial termination, or expiry in accordance with Clause 10 shall not prejudice or affect any right of action or remedy that shall have accrued or shall thereafter accrue to either party.
- 11.3. In the event of termination of the Contract for any reason:
 - a) the Supplier shall return to the Client all Client Property and all Client Data and other items belonging to the Client in its possession;
 - b) subject to the payment of the appropriate portion for work completed, the Supplier shall provide the Client with a copy of all work undertaken to date (whether completed or not). and

- c) Upon expiry or termination for any reason, the Supplier shall render reasonable assistance to the Client (and any third parties appointed by the Client) if requested, to the extent necessary to effect an orderly cessation of the Services.

12. WARRANTIES AND REPRESENTATIONS

12.1. The Supplier warrants and represents that:

- a) it has full capacity and all necessary consents to enter into and to perform the duties as specified herein;
- b) this Contract shall be performed in compliance with all applicable laws, enactments, orders, regulations and other similar instruments as amended from time to time;
- c) the Supplier warrants that the Ordered Services shall be provided and carried out by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- d) it shall discharge its obligations hereunder with all due skill, care and diligence including good industry practice and (without limiting the generality of this Clause 12, in accordance with its own established internal procedures;
- e) it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary for the performance of this Contract and the use of the Ordered Services by the Client. Should access to data needed to perform the contract, that is currently free of charge, become chargeable during the life of a contract the buyer will assist the supplier in obtaining the required licenses for the required IP rights;
- f) it has taken and shall continue to take all reasonable steps, in accordance with good industry practice, to prevent the introduction, creation or propagation of any disruptive element (including any virus, worm and/or trojan horse) onto the Ordered Service and into systems, data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Client;

- g) it shall take all reasonable measures to avoid any and all data loss and data corruption during the provision of the Ordered Services in accordance with good industry practice;

13. LIMITATION OF LIABILITY

- 13.1. Neither the Client nor the Supplier excludes or limits liability to the other for death or personal injury arising from its negligence or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 or for fraud or fraudulent misrepresentation.
- 13.2. Nothing in this Clause 13 shall be taken as limiting the liability of the Supplier in respect of Clause 14, Clause 15, and Clause 16.
- 13.3. In respect of any claims of liability arising out of the willful default of the Supplier, its employees, servants, the Supplier will have unlimited liability for all reasonably foreseeable loss suffered by the Client as a result of such act, omission or event giving rise to the claim.
- 13.4. Subject always to the provisions of Clauses 13.1, 13.2 and 13.3, the aggregate liability of the Client and the Supplier for each Year for all Defaults whether arising under contract, tort (including negligence) or otherwise in connection with this Contract shall in no event exceed whichever is the greater of Five hundred thousand pounds or a sum equivalent to one hundred and twenty five percent (125%) of the total charges paid or payable to the Supplier under all contracts entered into during a twelve (12) Month period specified by the claiming party, such twelve (12) Month period including the date on which at least one such Default arose.
- 13.5. Subject always to the provisions of Clauses 13.1, 13.2 and 13.3, in no event shall either the Client or the Supplier be liable to the other for:
- a) indirect or consequential loss or damage; and/or
 - b) loss of profits, business, revenue, goodwill or anticipated savings.
- 13.6. Subject always to the provisions of Clauses 13.1, 13.2 and 13.3, and 13.4, , the provisions of Clause 13.5 shall not be taken as limiting the right of either the Client or the Supplier to claim from the other for:
- a) reasonable additional operational and administrative costs and expenses;

- b) any reasonable costs or expenses rendered nugatory; and
- c) damage due to the loss of data, but only to the extent that such losses relate to the costs of working around any loss of data and the direct costs of recovering or reconstructing such data,

resulting directly from the Default of the other party.

13.7. The Client and the Supplier expressly agree that should any limitation or provision contained in this Clause 13 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted, but if any either of them thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

14. DATA PROTECTION

14.1. The Supplier shall comply at all times with the Data Protection Requirements and shall not perform its obligations under this Contract in such a way as to cause the Client to breach any of its applicable obligations under the Data Protection Requirements.

14.2. The Supplier shall be liable for and shall indemnify (and keep indemnified) the Client against each and every action, proceeding, liability, reasonable cost, claim, loss, reasonable expense (including reasonable legal fees and disbursements on a solicitor and Agency basis) and demand incurred by the Client which arise directly or in connection with the Supplier's data processing activities under this Contract, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, willful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Requirements by the Supplier or its employees, servants, agents or Sub-Suppliers.

14.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Supplier is the Processor unless otherwise specified in Schedule 12. The only processing that the Processor is authorised to do is listed in Schedule 12 by the Controller and may not be determined by the Processor.

14.4 The Processor shall notify the Client immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

- 14.5 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 14.6 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with Schedule 12, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that :
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 12);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data

- and ensure that they:
- (A) are aware of and comply with the Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (v) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (vi) the Data Subject has enforceable rights and effective legal remedies;
 - (vii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (viii) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

- 14.7 Subject to clause 1.6, the Processor shall notify the Controller immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 14.8 The Processor's obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 14.9 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request

from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

- 14.10 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 14.11 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 14.12 The Processor shall designate a data protection officer if required by the Data Protection Legislation.
- 14.13 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing.
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 14.14 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 14.15 The Controller may, at any time on not less than 30 Working Days' notice, revise

this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

- 14.16 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 14.17 Where the Parties include two or more Joint Controllers as identified in Schedule 12 in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule 12a in replacement of Clauses 14.3-14.16 for the Personal Data under Joint Control.

15. INTELLECTUAL PROPERTY RIGHTS

- 15.1. Save as granted under this Contract, neither the Client nor the Supplier shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights respectively save that each party hereby grants a license to the other party to use its Pre-Existing Intellectual Property Rights to the extent necessary to perform its obligations under this Contract.
- 15.2. All Intellectual Property Rights that are created by the Supplier in the provision of the Services to the Client shall be proprietary to and owned by the Client and the Supplier shall enter into such documentation and perform such acts as the Client shall request to properly vest such Intellectual Property Rights in the Client. Accordingly the Supplier hereby assigns (by way of present assignment of future intellectual property rights) all such Intellectual Property Rights.
- 15.3. The Supplier shall procure that the provision of the Ordered Services shall not infringe any Intellectual Property Rights of any third party.

15.4. The Supplier shall indemnify the Client against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and Agency basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right in connection with the provision of the Ordered Services, except to the extent that such liabilities have resulted directly from the Client failure properly to observe its obligations under this Clause 15.

15.5. Each of the parties shall notify the other if it receives notice of any claim or potential claim relating to the other party's Pre-Existing Intellectual Property Rights

16. CONFIDENTIALITY

16.1. Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the Client and the Supplier acknowledge that any Confidential Information originating from:

- a) the Client, its servants or agents is the property of the Client; and
- b) the Supplier, its employees, servants or agents is the property of the Supplier.

16.2. The Supplier and the Client shall procure that:

- a) any person employed or engaged by them (in connection with this Contract in the course of such employment or engagement) shall only use Confidential Information for the purposes of this Contract;
- b) any person employed or engaged by them in connection with this Contract shall not, in the course of such employment or engagement, disclose any Confidential Information to any third party without the prior written consent of the other party;
- c) they shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of this Contract by their employees, servants, agents or Sub-Suppliers; and

- d) without prejudice to the generality of the foregoing neither the Client nor the Supplier nor any person engaged by them whether as a servant or a consultant or otherwise shall use the Confidential Information for the solicitation of business from the other or from any third party.

16.3. The provisions of Clause 16.1 and Clause 16.2 shall not apply to any information which:

- a) is or becomes public knowledge other than by breach of this Clause 16; or
- b) is in the possession of the recipient without restriction in relation to disclosure before the date of receipt from the disclosing party; or
- c) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
- d) is independently developed without access to the Confidential Information; or
- e) must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
- f) is required to be disclosed by a competent regulatory Agency (including the Law Society or Solicitors Disciplinary Tribunal) or pursuant to any applicable rules of professional conduct.

16.4. Nothing in this Clause 16 shall be deemed or construed to prevent the Client from disclosing any Confidential Information obtained from the Supplier:

- a) to any other department, office or agency of Her Majesty's Government ("Crown Bodies"), provided that the Client has required that such information is treated as confidential by such Crown Bodies and their servants, including, where appropriate, requiring servants to enter into a confidentiality agreement prior to disclosure of the Confidential Information and the Client shall have no further liability for breach of confidentiality in respect of the departments, offices and agencies. All Crown Bodies in receipt of such Confidential Information shall be considered as parties to this Contract within Section 1(1) of the Contracts (Rights of Third Parties) Act 1999 for the purpose only of being entitled to further disclose the Confidential Information to other Crown Bodies on such terms; and
- b) to any consultant, Supplier or other person engaged by the Client in connection herewith, provided that the Client shall have required that such information be treated as confidential by such consultant, Supplier or other person, together with their servants including, where appropriate, requiring servants to enter into a confidentiality agreement prior to disclosure of the Confidential Information and the Client shall have no further liability for breach of confidentiality in respect of consultants, Suppliers or other people.

16.5. The Supplier shall, prior to commencing any work, enter into a confidentiality undertaking in the form set out in [Schedule 7](#).

16.6. If required by the Client, the Supplier shall procure that any of its Staff or associates enters into a confidentiality undertaking in the form set out in [Schedule 7](#) or such alternative form as the Client may substitute from time to time

16.7. Nothing in this Clause 16 shall prevent the Supplier or the Client from using data Processing techniques, ideas and know-how gained during the performance of this Contract in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential Information or an infringement by the Client or the Supplier of any Intellectual Property Rights.

17. PUBLICITY

17.1. The Supplier shall not make any press announcements or publicise this Contract in any way without the Client's prior written consent.

17.2. Notwithstanding the provisions of Clause 17.1, the Supplier shall be entitled to make any announcement required by any securities exchange or regulatory Agency or government body to which it subscribes whether or not the requirement has the force of law.

18. DISPUTE RESOLUTION

18.1. Subject to the provisions of Clause 18.2, any dispute arising under, or in connection with this Contract shall be dealt with in accordance with this Clause 18, and neither the Client nor the Supplier shall be entitled to commence or pursue any legal proceedings under the jurisdiction of the courts in connection with any such dispute, until the procedures set out in this Clause 18 have been exhausted.

18.2. Clause 18.1 shall be without prejudice to the rights of termination stated in [Clause 10](#) and in addition shall not prevent the Client or the Supplier from applying for injunctive relief in the case of:

- a) breach or threatened breach of confidentiality;
- b) infringement or threatened infringement of its Intellectual Property Rights;
or
- c) Infringement or threatened infringement of the Intellectual Property Rights of a third party, where such infringement could expose the Client or the Supplier to liability.

18.3. All disputes between the Client and the Supplier arising out of or relating to any Purchase Order shall be referred by Client's Representative or the nominated head of the Supplier's Accountant Management Team to the other for resolution.

18.4. If any dispute cannot be resolved pursuant to the provisions of Clause 18.3 within ten (10) Working Days either party may refer the dispute to the Client's Head of Procurement for resolution.

18.5. If any dispute cannot be resolved pursuant to the provisions of Clause 18.4 within ten (10) Working Days, then either party may refer the dispute to mediation and if necessary thereafter to the courts in accordance with the provisions of [Schedule 6](#).

19. INSURANCE

- 19.1. The Supplier shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Supplier under this Contract, including death or personal injury, or loss of or damage to property.
- 19.2. The Supplier shall hold employer's liability insurance in respect of its employees in accordance with any legal requirement for the time being in force.
- 19.3. The Supplier shall produce to the Client's Representative, within five (5) Working Days of request, copies of all insurance policies referred to in Clause 19.1 and Clause 19.2 or such other evidence as agreed between the Client and the Supplier that will confirm the extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 19.4. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to ensure that the amount of insurance cover is adequate to enable it to satisfy all its potential liabilities subject to the limit of liability specified in [Clause 13](#) of this Contract.

20. RECOVERY OF SUMS DUE

- 20.1. The Client shall be permitted to deduct and withhold from any sum due to the Supplier under this Contract any sum of money due from the Supplier under either:
- a) this Contract;
 - b) any other agreement between the Supplier and the Client;

provided that the terms of such other agreement provide for sums of money due from the Supplier under that agreement to be recovered by way of a deduction from sums of money due to the Supplier under this Contract (albeit that this Contract may not be referenced specifically under that agreement).

21. STATUTORY REQUIREMENTS

- 21.1. The Supplier shall notify the Client of all statutory provisions and approved safety standards applicable to the Ordered Services and their provision and shall be responsible for obtaining all licenses, consents or permits required for the performance of this Contract.

21.2. The Supplier shall inform the Client if the Ordered Services are hazardous to health or safety and of the precautions that should be taken in respect thereto.

21.3. The Supplier shall, and shall ensure that its personnel, agents and Sub-Suppliers, take all measures necessary to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to those involved in the performance of this Contract.

22. STATUTORY INVALIDITY

The Client and the Supplier expressly agree that should any limitation or provision contained in this Contract be held to be invalid under any particular statute or law, or any rule, regulation or bye-law having the force of law, it shall to that extent be deemed to be omitted but, if either the Client or the Supplier thereby becomes liable for loss or damage which would have otherwise been excluded, such liability shall be subject to the other limitations and provisions set out herein.

23. ENVIRONMENTAL REQUIREMENTS

23.1. The Supplier shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Services. Without prejudice to the generality of the foregoing, the Supplier shall promptly provide all such information regarding the environmental impact of the Services as may reasonably be requested by the Client.

23.2. The Supplier shall meet all reasonable requests by the Client for information evidencing compliance with the provisions of this Clause 23 by the Supplier.

24. DISCRIMINATION

24.1. The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof. The Supplier shall take all reasonable steps to secure the observance of this Clause by all Staff.

24.2. The Supplier shall take all reasonable steps to secure the observance of the provisions of Clause 24.1 by any Sub-Supplier(s) employed in the execution of this Contract.

25. SUPPLIER'S SUITABILITY

25.1. The Client reserves the right under this Contract to refuse to admit to any premises occupied by or on behalf of the Client the Supplier, whose admission has become, in the opinion of the Client, undesirable.

25.2. If the Supplier shall fail to comply with Clause 25.1 and if the Client (whose decision shall be final and conclusive) shall decide that such failure is prejudicial to the interests of the State and if the Supplier does not comply with the provisions of Clause 25.1 within a reasonable time of written notice so to do, then the Client may terminate the any Purchase Order provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Client.

26. OFFICIAL SECRETS ACTS

The Supplier shall take all reasonable steps to ensure that he and all people employed by him or his agents and Sub-Suppliers in connection with this Contract are aware of the Official Secrets Act 1989 and where appropriate, with the provisions of the Atomic Energy Act 1946, and that these Acts apply to them during the execution of this Contract and after the expiry or termination of this Contract.

27. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

27.1. The Supplier shall not:

- a) offer or give or agree to give any person in Her Majesty's Service any gift or consideration of any kind as an inducement or reward for doing, forbearing to do, or for having done or forborne to do any act in relation to the obtaining or execution of this Contract or any other contract for Her Majesty's Service or for showing favour or disfavour to any person in relation to this or any other contract for Her Majesty's Service;

- b) enter into this Contract or any other contract with a person in Her Majesty's Service in connection with which commission has been paid or agreed to be paid by him or on his behalf, or to his knowledge, unless before this Contract are accepted, made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Client.

27.2. Any breach of Clause 27.1 by the Supplier or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Supplier) or the commission of any offence by the Supplier or by anyone employed by him or acting on his behalf under the Prevention of Corruption Acts 1889 to 1916, in relation to this Contract or any other contract with Her Majesty's Service shall entitle the Client to terminate any Purchase Order and recover from the Supplier the amount of any direct loss resulting from such termination and/or to recover from the Supplier the amount or value of any such gift, consideration or commission.

27.3. Any dispute, difference or question arising in respect of the interpretation of this Clause 27, the right of the Client to terminate any Purchase Order or the amount or value of any such gift, consideration or commission shall be decided by the Client, whose decision shall be final and conclusive.

27.4. Either Party may terminate this contract and recover all its losses if the other Party, their employees or anyone acting on their behalf:

- a. Corruptly offers, gives or agrees to give to anyone any inducement or reward in respect of this Contract; or
- b. Commits an offence under the Bribery Act 2010.

28. TRANSFER AND SUB-CONTRACTING

28.1. Sub-contracting will be allowed, subject to written authorisation from the Client.

28.2. The Client shall be entitled to nominate sub-Suppliers at its discretion.

28.3. The Supplier shall be entitled to Sub-Contract its obligations under this Contract, or any resultant Purchase Order, solely with the express permission of the Client Representative; such permission shall not be unreasonably withheld.

28.4. Any sub-contract must allow for full disclosure under 'transparency' requirements.

28.5. The Client shall be entitled to assign or otherwise dispose of its rights and obligations under this Contract and/or any relevant Purchase Order to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Client.

29. RIGHTS OF THIRD PARTIES

29.1. To the extent that this Contract are expressed to confer rights or benefits on a party who is not a party to this Contract, that party shall by virtue of the Contracts (Rights of Third Parties) Act 1999, be entitled to enforce those rights as if it was a party to this Contract. For the avoidance of doubt the consent of any person other than the Client (or the Supplier, as the case may be) is not required to vary or terminate this Contract.

29.2. Except as provided in Clause 29.1, a person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This Clause 29.2 does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

30. CLIENT PROPERTY

30.1. All Client Property shall remain the property of the Client and shall be used only for the purposes of the Contract.

30.2. The Supplier undertakes the safe custody of and the due return of all Client Property and shall be responsible for all reasonably foreseeable loss thereof from whatever cause and shall indemnify the Client against such loss.

30.3. Neither the Supplier, nor any SubSupplier nor any other person shall have a lien on any Client Property for any sum due to the Supplier, SubSupplier or other person and the Supplier shall take all reasonable steps to ensure that the title of the Client and the exclusion of any such lien are brought to the notice of all SubSuppliers and other persons dealing with any Client Property

31. SEVERABILITY

Subject to the provisions of [Clause 22](#), if any provision of this Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Contract had been accepted with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Contract, the Client and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

32. FREEDOM OF INFORMATION

32.1. The Supplier acknowledges that the Client is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations and shall assist and cooperate with the Client to enable the Client to comply with its Information disclosure obligations.

32.2. The Supplier shall, and shall procure that its Sub-Suppliers shall:

- transfer to the Client all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- provide the Client with a copy of all Information in its possession, or power in the form that the Client requires within five Working Days (or such other period as the Client may specify) of the Client's request; and
- provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

32.3. The Client shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other contract whether the Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

32.4. In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Client.

32.5. The Supplier acknowledges that (notwithstanding the provisions of [Clause 42 – Transparency](#), the Client may, be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:

- in certain circumstances without consulting the Supplier; or
- following consultation with the Supplier and having taken their views into account;

provided always that where [reference] applies the Client shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

32.6. The Supplier shall ensure that all Information is retained for disclosure and shall permit the Client to inspect such records as requested from time to time.

32.7. The Supplier acknowledges that the Commercially Sensitive Information listed in [Schedule 9](#) (if any) is of indicative value only and that the Client may be obliged to disclose it in accordance with [clause 32](#).

33. FORCE MAJEURE

- 33.1. For the purposes of this Contract the expression "Force Majeure" shall mean any cause affecting the performance by either the Client or the Supplier of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the willful act, neglect or failure to take reasonable precautions of the affected party, its employees, servants or agents or the failure of either the Client or the Supplier to perform its obligations under any Purchase Order.
- 33.2. It is expressly agreed that any failure by the Supplier to perform or any delay by the Supplier in performing its obligations under any Purchase Order which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Supplier shall have entered into any contract, supply arrangement or Sub-Contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such Purchase Order, supply arrangement or Sub-Contract or otherwise as a result of circumstances of Force Majeure.
- 33.3. Both the Client and the Supplier agree that any acts, events, omissions, happenings or non-happenings resulting from the adoption of the Euro by the United Kingdom government shall not be considered to constitute Force Majeure under this Contract.
- 33.4. Neither the Client nor the Supplier shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations which is due to Force Majeure. Notwithstanding the foregoing, both the Client and the Supplier shall use all reasonable endeavors to continue to perform, or resume performance of, (and having resumed to catch up to the required level of performance existing immediately prior to the Force Majeure event), such obligations hereunder for the duration of such Force Majeure event.

33.5. If either the Client or the Supplier become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

33.6. It is hereby expressly declared that the only events that shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

34. LEGISLATIVE CHANGE

34.1. The Supplier shall bear the cost of ensuring that the Ordered Services shall comply with all applicable statutes, enactments, orders, regulations or other similar instruments and any amendments thereto, except where any such amendment could not reasonably have been foreseen by the Supplier at the date hereof.

34.2. Where such reasonably unforeseeable amendments are necessary, the Client and the Supplier shall use all reasonable endeavors to agree upon reasonable adjustments to the Charges as may be necessary to compensate the Supplier for such additional costs as are both reasonably and necessarily incurred by the Supplier in accommodating such amendments.

35. CONFLICTS OF INTEREST

The Supplier shall disclose to the Client's Representative as soon as is reasonably practical after becoming aware of any actual or potential conflict of interest relating to provision of the Services by the Supplier or any event or matter (including without limitation its reputation and standing) of which it is aware or anticipates may justify the Client taking action to protect its interests.

36. ASSIGNED STAFF

- 36.1. As soon as the Supplier becomes aware of any intended changes to the Account Management Team, they shall inform the Client Representative.
- 36.2. The Client may require the Supplier to attend a meeting and/or submit written notification of the steps it intends to take to mitigate any issues which may result from such changes.

37. INVESTIGATIONS

The Supplier shall immediately notify the Client Representative in writing if any investigations are instituted into the affairs of the Supplier, its partners or key managers under the Companies, Financial Services or Banking Acts, or in the event of any police or Serious Fraud Office enquiries, enquires into possible fraud, any involvement in DTI investigations or any investigations by the Office for the Supervision of Solicitors which might result in public criticism of the Supplier.

38. STATUTORY AUDITORS' ACCESS

For the purposes of the examination and certification of the Client accounts or any examination, pursuant if appropriate to Section 6(1) of the National Audit Act 1983 or any re-enactment thereof, or pursuant to any equivalent legislation, of the economy, efficiency and effectiveness with which the Client has used its resources, the Client's statutory auditors may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to produce such oral or written explanations as they consider necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination, if appropriate, under section 6(3) (d) of the National Audit Act 1983 or any re-enactment thereof, or under any equivalent legislation, in relation to the Supplier is not a function exercisable under this clause 38.

39. ELECTRONIC INSTRUCTION

The Supplier shall use its reasonable endeavors to interface with any system introduced by the Client for issuing electronic instructions, in particular the FSA's Purchase Order system, and to accept such instruction.

40. WAIVER

40.1. The failure of the Supplier or the Client to insist upon strict performance of any provision of this Contract or to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Contract.

40.2. A waiver of any default shall not constitute a waiver of any other default.

40.3. No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver communicated by notice, in accordance with the provisions of [Clause 9](#).

41. LAW AND JURISDICTION

Subject to the provisions of [Clause 18](#), the Client and the Supplier accept the exclusive jurisdiction of the English and Welsh courts and agree that this Contract is to be governed by and construed according to the law of England and Wales.

42. TRANSPARENCY

- 42.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of these Terms and Conditions and any Purchase Order is not Confidential Information.
- 42.2. The Client shall be responsible for determining in its absolute discretion whether any content of any Purchase Order is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of these Terms and Conditions, the Supplier gives his consent for the Client to publish any Contract or Purchase Order in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), to the general public.
- 42.3. The Client may consult with the Supplier to inform its decision regarding any redactions but the Client shall have the final decision in its absolute discretion.

43. SECURITY PROVISIONS

Supplier Personnel – Staffing Security

- 43.1 The Supplier shall comply with the staff vetting procedures in respect of all Supplier Personnel employed or engaged in the provision of the Services. The Supplier confirms that all Supplier Personnel employed or engaged by the Supplier at the Effective Date were vetted and recruited on such a basis that is equivalent to and no less strict than the Staff Vetting procedures as laid out by Cabinet Office: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200551/HMG_Baseline_Personnel_Security_Standard_V3_2_Apr-2013.pdf
- 43.2 The Supplier shall provide training on a continuing basis for all Supplier Personnel employed or engaged in the provision of the Services in compliance with the Security Policy – Table of Policies – See Annex D.
- 43.3 The Supplier agrees to conform to the below standards as directed by the Client:
- Baseline Standard
- a) The **Baseline Standard** is not a formal security clearance but aims to provide an appropriate level of assurance as to the trustworthiness, integrity and probable reliability of prospective **Suppliers** and/or their **Staff**.

- b) It should be applied to all private sector **Employees** working on government **Contracts** (e.g. **Suppliers** and consultants), who require access to the **Agency's** premises, or knowledge or custody of, government assets protectively marked up to and including CONFIDENTIAL.
- c) The outcome of checks should be recorded on the **Baseline Standard Verification Record**. This will be carried out by the **Agency's Representative**.

Enhanced Baseline Standard

Some **Contracts** may require the **Baseline Standard** to be supplemented with additional checks (e.g. a Criminal Record Check (including spent convictions) or a Credit Worthiness Check). A Criminal Record Check could take up to 2 **Weeks** to process.

43.4 The Baseline Standard comprises verification of the following four main elements:

- a) Identity
- b) Employment history (past 3 years)
- c) Nationality and Immigration Status
- d) Criminal record (unspent convictions only)

43.5 Additionally, Suppliers and their staff are required to give a reasonable account of any significant periods (6 months or more in the past 3 years) of time spent abroad.

43.6 Verification of identity is essential before any individual can begin working on the Client's premises or have access to assets/documents as described above. Before a contract is awarded Suppliers and their staff who will work on the Client's premises or have access to assets/documents as described above will be asked to provide the following:

- a) Confirmation of name, date of birth and address. (ID should be corroborated by original documents i.e. full passport, national ID card, current UK full driving license, birth certificate, bank correspondence or utility bills.)
- b) National insurance number or other unique personal identifying number where appropriate.
- c) Full details of previous employers (name, address and dates), over the past 3 years.

- d) Confirmation of any necessary qualifications/licences.
- e) Educational details and references where someone is new to the workforce.
- f) Confirmation of permission to work in the UK if appropriate.

43.7 Client Data

- a) The Supplier shall not delete or remove any proprietary notices contained within or relating to the Client Data.
- b) The Supplier shall not store, copy, disclose, or use the Client Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Client.

43.8 To the extent that Client Data is held and/or processed by the Supplier, the Supplier shall supply that Client Data to the Client as requested by the Client in the format specified herein:

43.9 The Supplier shall take responsibility for preserving the integrity of Client Data and preventing the corruption or loss of Client Data.

43.10 The Supplier shall perform secure back-ups of all Client Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster Recovery Plan. The Supplier shall ensure that such back-ups are available to the Client at all times upon request and are delivered to the Client at no less than monthly intervals.

43.11 The Supplier shall ensure that any system on which the Supplier holds any Client Data, including back-up data, is a secure system that complies with the Security Policy.

43.12 If the Client Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Client may:

- require the Supplier (at the Supplier's expense) to restore or procure the restoration of Client Data to the extent and in accordance with the requirements specified in herein and the Supplier shall do so as soon as practicable but not later than two working days; and/or
- itself restore or procure the restoration of Client Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified herein

43.13 If at any time the Supplier suspects or has reason to believe that Client Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Client immediately and inform the Client of the remedial action the Supplier proposes to take.

Protection of Personal Data

43.14 With respect to the parties' rights and obligations under this Contract, the parties agree that the Client is the Data Controller and that the Supplier is the Data Processor. The Supplier shall:

- process the Personal Data only in accordance with instructions from the Client (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Client to the Supplier during the Term);
- process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
- implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- take reasonable steps to ensure the reliability of any Supplier Personnel who have access to the Personal Data;
- obtain prior written consent from the Client in order to transfer the Personal Data to any Sub-suppliers or Affiliates for the provision of the Services;

- ensure that all Supplier Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 43;
- ensure that none of Supplier Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Client;
- notify the Client (within five Working Days) if it receives:
 - a request from a Data Subject to have access to that person's Personal Data; or
 - a complaint or request relating to the Client's obligations under the Data Protection Legislation;
- provide the Client with full cooperation and assistance in relation to any complaint or request made, including by:
 - providing the Client with full details of the complaint or request;
 - complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Client's instructions;
 - providing the Client with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Client); and
 - providing the Client with any information requested by the Client;
- permit the Client or the Client Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 38 (Audits), the Supplier's data Processing activities (and/or those of its agents, subsidiaries and Sub-suppliers) and comply with all reasonable requests or directions by the Client to enable the Client to verify and/or procure that the Supplier is in full compliance with its obligations under this Contract;
- provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by the Client); and
- not Process Personal Data outside the European Economic Area without the prior written consent of the Client and, where the Client consents to a transfer, to comply with:
 - the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - any reasonable instructions notified to it by the Client.

43.15 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the

Client to breach any of its applicable obligations under the Data Protection Legislation.

Confidentiality

43.16 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall

- treat the other party's Confidential Information as confidential [and safeguard it accordingly]; and
- not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

43.17 Clause 43.13 shall not apply to the extent that:

- such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 32 (Freedom of Information);
- such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- such information was obtained from a third party without obligation of confidentiality;
- such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- it is independently developed without access to the other party's Confidential Information.

43.18 The Supplier may only disclose the Client's Confidential Information to the Supplier Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Supplier Personnel are aware of and shall comply with these obligations as to confidentiality.

43.19 The Supplier shall not, and shall procure that the Supplier Personnel do not, use any of the Client's Confidential Information received otherwise than for the purposes of this Contract.

- 43.20 At the written request of the Client, the Supplier shall procure that those members of the Supplier Personnel identified in the Client's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 43.21 Nothing in this Contract shall prevent the Client from disclosing the Supplier's Confidential Information:
- to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Agency;
 - to any consultant, supplier or other person engaged by the Client or any person conducting an Office of Government Commerce gateway review;
 - for the purpose of the examination and certification of the Client's accounts; or
 - for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources.
- 43.22 The Client shall use all reasonable endeavours to ensure that any government department, Contracting Agency, employee, third party or Sub-Supplier to whom the Supplier's Confidential Information is disclosed pursuant to clause 43 is made aware of the Client's obligations of confidentiality.
- 43.23 Nothing in this clause 43 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

Security Requirements

- 43.24 The Supplier shall comply, and shall procure the compliance of the Supplier Personnel, with the Security Policy (see Table of Policies – See Annex D) and the Supplier shall ensure that the Security Plan produced by the Supplier fully complies with the Security Policy.
- 43.25 The Client shall notify the Supplier of any changes or proposed changes to the Security Policy.

43.26 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.

43.27 Until and/or unless a change to the Charges is agreed by the Client pursuant to clause 43 the Supplier shall continue to perform the Services in accordance with its existing obligations.

Malicious Software

43.28 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

43.29 Notwithstanding clause 43, if Malicious Software is found, the parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Client Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

43.30 Any cost arising out of the actions of the parties taken in compliance with the provisions of clause 43 shall be borne by the parties as follows.

- by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software or the Client Data (whilst the Client Data was under the control of the Supplier); and
- by the Client if the Malicious Software originates from the Client Software or the Client Data (whilst the Client Data was under the control of the Client);

Warranties

43.31 The Supplier warrants, represents and undertakes for the duration of the Term that all personnel used to provide the Services will be vetted in accordance with good industry practice and the Supplier's usual staff vetting procedures.

44. ACCEPTANCE TESTING IS NOT APPLICABLE

45. EXIT MANAGEMENT

(Depending on the complexity of the services a separate Schedule (see Schedule 11) may be required)

- 45.1. On receipt of notice to terminate this Contract or a Purchase Order or expiration of this Contract or a Purchase Order, however and whenever occurring, the Parties shall comply with the Exit Management Requirements as may be set out in any appropriate Purchase Order.
- 45.2. During the Exit Period the Charges shall continue to apply, even where the Exit Period continues after the expiry of the Term.
- 45.3. In order to facilitate the Exit Management Requirements, the Supplier shall, if requested by the Client to do so, extend the Term of this Contract or a Purchase Order.
- 45.4. No right or licence is granted to either Party or their advisers in relation to any Confidential Information except as expressly set out in this Contract.

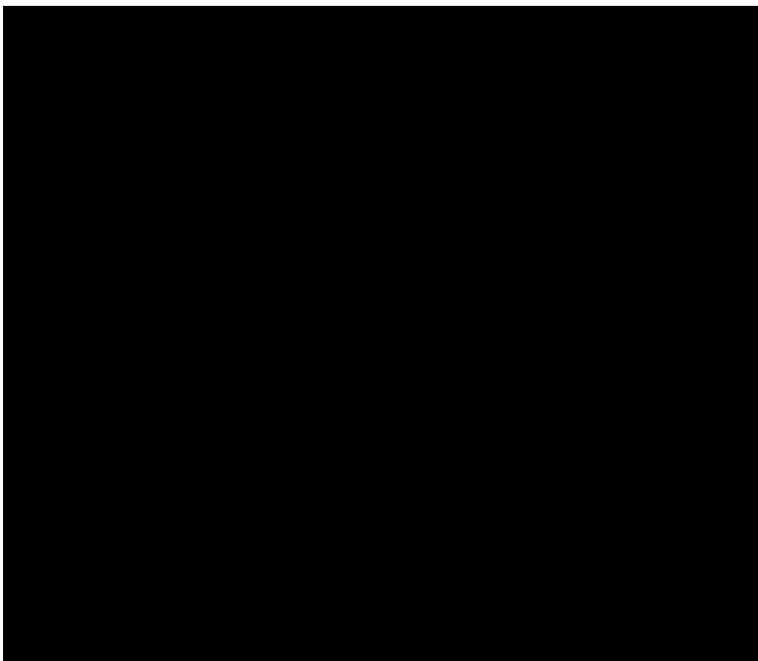
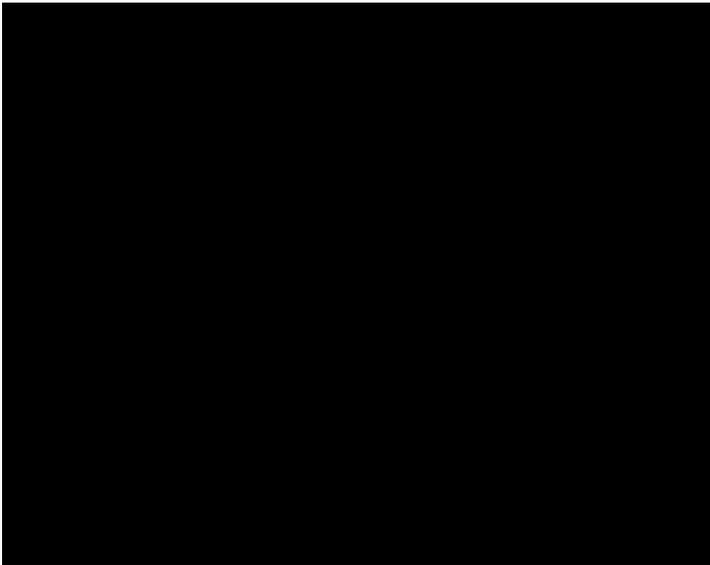
46. ENTIRE AGREEMENT

This Contract constitutes the entire understanding between the Client and the Supplier relating to the subject matter.

- 46.1. Neither the Client nor the Supplier has relied upon any representation or promise except as expressly set out in this Contract.
- 46.2. Both the Client and the Supplier unconditionally waives any rights it may have to claim damages against the other on the basis of any statement made by the other (whether made carelessly or not) not set out or referred to in this Contract (or for breach of any warranty given by the other not so set out or referred to) unless such statement or warranty was made or given fraudulently.
- 46.3. Both the Client and the Supplier unconditionally waives any rights it may have to seek to rescind this Contract on the basis of any statement made by the other (whether made carelessly or not) whether or not such statement is set out or referred to in this Contract unless such statement was made fraudulently.

This contract is deemed to have commenced at the date given on page 1.

Signed for and on behalf of the **Foods Standards Agency**:



SCHEDULE 1
INTERPRETATIONS

Account Management Team	The Supplier's personnel who have been designated as their point(s) of contact for management of this contract
Agreement	means this contract
Client Property	means anything issued or otherwise furnished in connection with the Contract by or on behalf of the Client, other than any real property.
Client's Representative	means the member of the Client staff who shall be the main contact point under the Contract or any relevant Purchase Order
Charges	means charges payable by the Client to the supplier for the performance of the Services, which must be itemised in full on any relevant Purchase Order
Confidential Information	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of either party, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.
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.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer	take the meaning given in the GDPR
Data Loss Event	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier 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.
Data Protection Legislation	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] 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 Requirements	mean the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

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.
Default	means any breach of the obligations of any party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of any party, it's employees, agents or Sub-Suppliers in connection with or in relation to the subject matter of this Contract and in respect of which such party is liable to the other.
DPA 2018	Data Protection Act 2018
Environmental Information Regulations	mean the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations.
Equipment	means any computers, laptops, servers, networks, internet broadband, wireless or other connections, other computer associated equipment or presentation equipment
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.
GDPR	the General Data Protection Regulation (Regulation (EU) 2016/679)
Government Accounting	means HM Treasury's manual of accounting principles for government as updated from time to time

Government Procurement Card (GPC)	means the UK Government's VISA purchasing card.
Industry Regulator	means any statutory or non-statutory body with responsibility for regulating (or promoting self regulation) of the provision on the type of services being provided by the Supplier.
Information	has the meaning given under section 84 of the Freedom of Information Act 2000.
Intellectual Property Rights	means patents, trademarks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, trade or business names and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom).
Invoicing Procedure	means the procedure by which the Supplier invoices the Client, as set out in Schedule 5 .
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)
Mediator	has the meaning ascribed to it in Schedule 6 .

Month	means a calendar month and “Monthly” shall be similarly construed.
Nominated Sub-Supplier	means any sub-Supplier engaged by the Supplier, at the direction of the Client, in connection with the provision of Ordered Services
Ordered Services	means the services which the Client has instructed the Supplier to carry out in any Purchase Order, subject to Schedule 2 .
Party	means a Party to this Agreement
Personal Data	shall have the same meaning as set out in the Data Protection Act 1998.
Pre-Existing Intellectual Property Rights	shall mean any Intellectual Property rights vested in or licensed to the Supplier or Client prior to or independently of the performance by the Supplier or Client of their obligations under this Contract.
Private Agency	means a commercial organisation to which service provision has been outsourced by a Contracting Agency, which assumes the role and responsibilities of the Agency under a Contract.
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	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule [x] (Security).
Purchase Order	means an order for Services served by the Client on the Supplier by means of the Client's i-Procurement system
Quarter	means a three (3) month period beginning on 1 st January, 1 st April, 1 st July or 1 st October. The term 'Quarterly' shall be similarly construed.
Regulatory Body	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Client and "Regulatory Body" shall be construed accordingly.
Requests for Information	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.
Services	means services which the Supplier has agreed to provide under any Purchase Order.
Special Terms	means additional Client specific terms, to which the Supplier's has agreed
Specific Obligations	means any obligations entered at Schedule 3

Staff	means employees, agents and Suppliers of the Supplier
Sub-Supplier	means any sub-Supplier engaged by the Supplier in connection with the provision of Ordered Services.
Sub-Processor	means any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement
Supplier	The person identified in the Contract their employees, agents or any other persons under the control of the Supplier
Working Days	means Monday to Friday inclusive, excluding English public and bank holidays.
Year	means a calendar year.

SCHEDULE 2

THE ORDERED SERVICES

1. INTRODUCTION

This Schedule 2 specifies the Ordered Services to be provided to the Client by the Supplier in the services required for FS115005. Please see the Schedule 2 - "Evidence Requirement Document"

This Schedule will be completed by reference to the successful Tenderer's quotation.

2. SPECIFICATION

Service requirements

Based on an FSA risk assessment and current intelligence the number of sanitary survey reviews required, and the overdue backlog, for each country are presented in the table below. This includes sanitary surveys undertaken over 6 years ago which require review and are scheduled in a phased approach each year.

Tenders should give a base price of each element of a review, as outlined in the specification section below (with a breakdown of the staff costs and other criteria) but also indicate any volume discounts that are available. Tenders should also refer to the EURL Guide to Good Practice for more information on the requirements of a sanitary survey review.

The following are figures for the number of reviews that must be delivered over the contract period:

Country	2020/21 Reviews	2021/22 Reviews	2022/23 Reviews
England and Wales	10	10	12
Northern Ireland	4	2	1

If the extension of contract is triggered, then the following must be delivered over the additional two years:

Country	2023/2024 Reviews	2024/2025 Reviews
England and Wales	11	13
Northern Ireland	0	0

Tenders are invited to provide a service to undertake sanitary survey reviews for the agreed number specified by the FSA for shellfish harvesting areas across 'England and Wales' and 'Northern Ireland', for the period 1 April 2020 and 31 March 2023 – with an FSA option to extend for another 2 years. Separate bids as referred to below will also be considered.

Tenders are invited for the following areas divided into two lots:-

- I. England and Wales
- II. Northern Ireland

- Tenders are invited for both lots or one; please provide details of any applicable discount for multiple awards.
- Bids should be based on the figures as specified above.
- Please state in your application if you would consider undertaking the project for 'England and Wales' or 'Northern Ireland' or for both areas.

The aim of this programme of work is to undertake a desktop based review of existing shellfish production areas, provide the FSA with a review of the information, data and assessment of existing sanitary surveys and provide recommendations on revised RMPs, production zone boundaries and sampling plans, if required, for official control *E. coli* monitoring of classified production areas.

The FSA requires the following services for provision of sanitary survey reviews:

The supplier will undertake a review of sanitary surveys in defined stages, the extent of the reviews will depend on the risk prescribed by the Agency. The initial stage for all reviews will be a desktop assessment.

Desktop assessment

1. The supplier will undertake a desk-based review of the existing sanitary survey, to identify any significant changes in the following factors since the primary survey:
 - Characterisation of shellfishery(ies), including whether the area is used for production (including holding LBMs) or relaying.
 - Potential sources of pollution:
 - Continuous sewage discharges (Including trade-related discharges with a significant sewage content)
 - Rainfall-dependent sewage discharges (combined sewer or storm tank overflows) and other rainfall-dependent discharges (stormwater discharges)
 - Emergency discharges (e.g. for pump failure at sewage works)
 - Discharges from septic tanks or similar
 - Land use
 - Farm animals
 - Wildlife
 - Ships and boats including marinas and moorings
 - Any seasonal variations in above factors (e.g. application of manure/slurry to land, tourism, farm animals, etc)

This information will be considered in conjunction with geographical information obtained from sources such as Ordnance Survey maps or UK Hydrographic Office charts and any other readily identifiable internet sources.

Consideration may also be given to hydrographic modelling, effect of wind and density driven currents, use of tidal charts and/or tidal stream software, etc.

2. The FSA will provide the supplier with a catalogue of available sanitary surveys and access to microbiological data from historical monitoring of the area or surrounding waters. The supplier will assess these to ensure they are still fit for purpose.
3. The supplier will report on and assess the impact of changes that have taken place since the last sanitary survey for the production area, taking into account any information from provisional monitoring point (pRMP) assessments (now desktop assessments) or sanitary survey reviews that may have been undertaken since the primary survey.
4. The supplier will provide a report on the desktop review findings including detail of any significant changes in contamination sources that have taken place since the last survey/assessment and suggest recommendations on revised RMPs, production zone boundaries and sampling plans, where required, to help mitigate the risk to shellfish.

Shoreline survey element

5. If the desktop assessment identifies significant risks affecting the production area, FSA will determine if a shoreline survey is required to ensure that all significant sources of contamination are captured and evaluated.
6. The FSA reserves the right to decide on the extent of any required shoreline survey.
7. A shoreline survey verifies the risks identified as part of the desktop assessment for the shoreline and area adjacent to the harvesting area, to

confirm the presence of potential contamination sources and to identify unknown potential sources of contamination.

8. The shoreline survey will encompass the following:
 - Confirm the information obtained on the location and nature of potential pollution sources
 - Identify additional potential sources of pollution
 - Where requested, samples for E. coli analysis should be taken from any previously unidentified sewage or surface water discharges, any watercourses discharging near harvesting areas and any bivalve molluscs from near the potential impacting sources. Sampling should be undertaken in accordance with official protocol and related costs (sampling, transportation and analysis) are factored into the supplier's tender for this element.
9. The supplier will update the initial report containing the detail of the shoreline survey of the production area as above to include ample image capture evidence to support findings.

Revision of RMP's or sampling plan

10. Any potential revision of the RMPs and sampling plan will be determined by the desktop study (and shoreline survey if required). The location and revision of the monitoring points will be expressed in both WGS 84 latitude/longitude and NGR measurements) for every zone and every species within the production area.

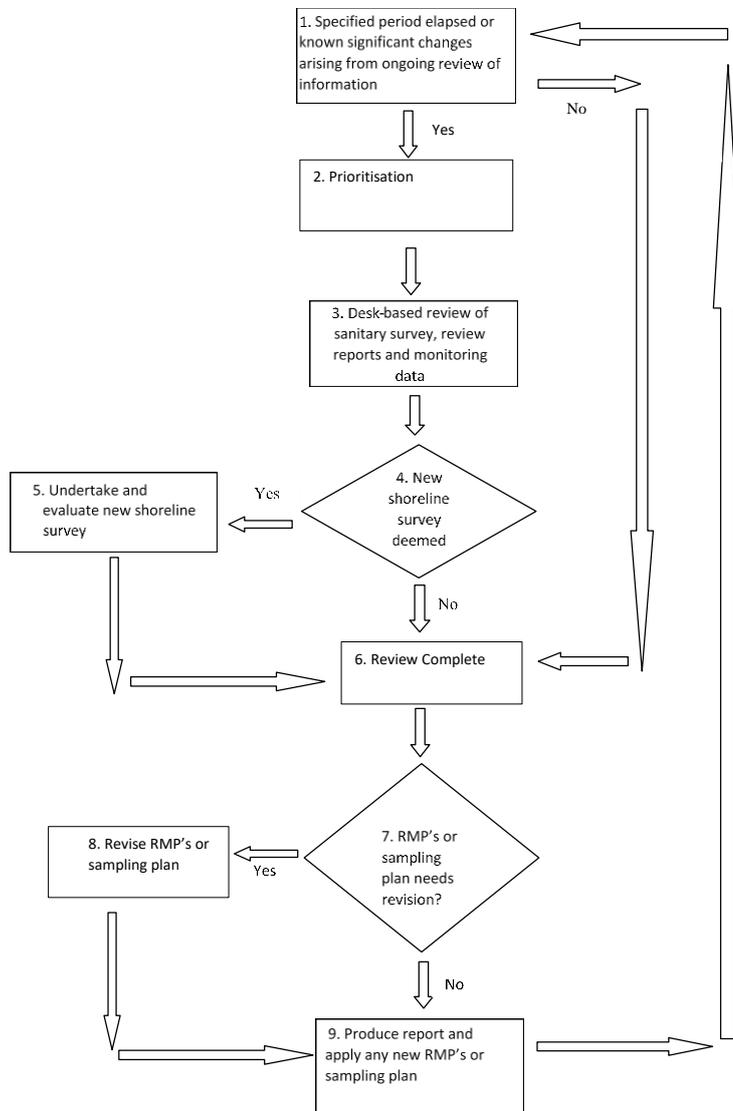
Delivery of review output

11. A final written report covering all elements of the review activity, shall explain any new information that has been identified and whether major elements of the original sanitary survey can be regarded as essentially unchanged. The report to the FSA must detail the following:
 - a. A review and re-assessment of the major potential faecal pollution sources including any changes to:

- sewage treatment and infrastructure
 - housing and development
 - land use in the catchment area
 - environmental conditions
 - changes in sources of pollution or new evidence relating to the actual or potential impact of sources
- b. Information on nearby existing classified areas and compliance significance to proposed new area;
 - c. A review and analysis of historical microbiological data/results;
 - d. Review any changes to harvester operations;
 - e. Recommendations on any revision required to RMP(s), provisional revised boundaries for the beds and revised sampling plan (see Annex 1 for an example of a sampling plan);
 - f. Recommendations on the potential use of indicator species (where relevant);
 - g. Any of the above accompanied by associated data tables and map/s where appropriate.
 - h. Should there be any modifications required to RMPs or production area boundaries from those recommended in the primary survey report, the review report will provide:
 - A description of the revised boundaries.
 - A revised sampling plan.
 - The boundaries and RMP(s) locations given in both text and map form. Maps must contain sufficient geographical or place name reference points as well as the coordinates of the production area boundaries.

Reports delivered under this contract will be held by the FSA under Crown copyright.

The graphic below indicates the process flow of reviews.



The specification – Part B – Sanitary Surveys

Tenders are invited to carry out sanitary surveys for new LBM production areas.

THE PROCEDURE FOR SANITARY SURVEYS

The primary element of a sanitary survey for new areas is a desktop assessment. This will be undertaken to enable sampling to be initiated at a new specific LBM bed for classification purposes. The desktop assessment provides the most suitable representation of the microbiological quality of the area where the LBMs are grown, based on a desk top review, assessment of publicly available information on the geographical characteristics of the area and potential sources of pollution, as well as any existing sanitary surveys and/or *E. coli* data relating to the area (if available) or any neighbouring classified production areas (where relevant).

The purpose of the desktop assessment is to determine the location of an RMP to inform a provisional sampling plan to facilitate the classification of a new production area/bed; it also confirms the provisional boundary of the area/bed requested to be classified. Although the boundary of the production area or bed is suggested in the harvester's application, it is necessary to define the boundary co-ordinates of the water body based on the available evidence to ensure any identified sources of pollution are considered.

The provisional sampling plan includes details on the RMP location, tolerance for deviation from the prescribed official control sample collection point (RMP), depth of sampling, frequency and method of sampling and production area boundary (see Annex 1).

Desktop assessments may also be required:

- Where different species require classification in an existing classified area/bed, or;
- Where changes are made to the boundary of an existing classified area/bed, or;
- For re-evaluation of existing sampling points or boundaries due to the movement of stock or changes to harvesting practices.

SERVICE REQUIREMENTS

Based on the number of applications for previous years, and current intelligence on harvesting activity, the following **estimated** numbers of desktop assessments for each country are presented in a table below. A degree of flexibility will be required with regards to numbers of desktop assessment undertaken within this call-off contract. Tenders should state the supplier's capacity to increase volume to that suggested in the forecast.

Tenders should give a base price per assessment (with a breakdown of costs for each element) and indicate any volume discounts that are available. Tenders should also refer to the EURL Guide to Good Practice for more information on the requirements of a sanitary survey.

Forecasted figures

Country	2020/21	2021/22	2022/2023
England and Wales	12	12	12
Northern Ireland	2	2	2

If the extension of contract is triggered, then the following is **estimated** for the additional two years:

Country	2023/2024	2024/2025
England and Wales	12	12
Northern Ireland	2	2

Tenders are invited to provide a service to deliver desktop assessments for all classification applications for potential shellfish production areas approved by the FSA between 1 April 2020 and 31 March 2023 subject to an optional extension of 2 years across 'England and Wales' and 'Northern Ireland'.

Tenders are invited for the following areas:-

- I. England and Wales
- II. Northern Ireland

- Tenders are invited for both lots or one; please provide details of any applicable discount for multiple awards.
- Please state in your application if you would consider undertaking the project for 'England and Wales' or 'Northern Ireland' only or for both areas.

Specification

Desktop assessment element

The FSA requires the following service for provision of desktop assessments for new production areas:

12. For each new area to be classified, or existing classified area where there are changes to classified species, area boundaries or location of RMP are

required, the supplier must identify an RMP, a provisional boundary and a provisional sampling plan, which must include a proposed name for the RMP related to the local area.

13. An application may require one or more desktop assessment(s) to address the information from the application form provided by the FSA. In some instances, more than one application may be received for the same larger area which may require only one desktop assessment.
14. The supplier will consider the location, extent and nature of the proposed shellfishery in conjunction with readily available information on permitted sewage discharges in the area, location of major watercourses, harbours and any other potential sources of microbiological pollution.
15. This information will be considered in conjunction with geographical information obtained from sources such as Ordnance Survey maps or UK Hydrographic Office charts and any other readily identifiable internet sources.
16. The supplier will provide recommendations for the potential use of shellfish indicator species where appropriate, that can be used within the area to classify/monitor other species.
17. The FSA will provide the supplier with a catalogue of available sanitary surveys and survey reviews and access to microbiological data from historical monitoring of the area or surrounding waters.
18. The location that will be subject to desktop assessment (expressed in both WGS 84 latitude/longitude and NGR measurements) will be communicated to the FSA, along with a written report for each location. Mapinfo compatible tables and Ordnance Survey grid references must also be included.
19. The written report shall detail the following:
 - a. A summary of all potential faecal pollution sources;
 - b. Information on nearby existing classified areas and compliance significance to proposed new area;
 - c. A summary and analysis of historical microbiological data (where available);

- d. An assessment of the impact of the principal sources of faecal contamination on the area;
- e. Recommendations on proposed desktop assessment(s), provisional boundaries for the production area/bed and sampling plan (see Annex 1 for an example of a sampling plan);
- f. Recommendations on the potential use of indicator species (where relevant);
- g. Recommendations on the potential need for a shoreline survey;
- h. Recommendations on the potential need for a bacteriological survey.

Items d and e will be documented in text and accompanied by associated data tables and map/s.

Shoreline survey element

20. If the desk study identifies significant risks affecting the production area, FSA will determine if a shoreline survey is required to ensure that all significant sources of contamination are captured and evaluated. The FSA reserves the right to decide on the extent of any required shoreline survey.
21. A shoreline survey verifies identified risks from the desktop assessment for the shoreline and area adjacent to the harvesting area, to confirm the presence of potential contamination sources and to identify unknown potential sources of contamination.
22. The shoreline survey will encompass the following;
 - Confirm the information obtained on the location and nature of potentially polluting sources
 - Identify additional potential sources of pollution
 - Where requested, samples for E. coli analysis should be taken from any previously unidentified sewage or surface water discharges, any watercourses discharging near harvesting areas and any bivalve molluscs from near the potential impacting sources. Sampling should be undertaken in accordance with official protocol and related costs (sampling, transportation and analysis) are factored into the supplier's tender for this element.

- The supplier will provide a report containing the detail of the shoreline survey of the production area as above to include ample image capture evidence to support findings.

Bacteriological survey element

23. A bacteriological survey may be undertaken where the desktop study and shoreline survey does not provide sufficient information to establish a representative sampling plan and determine representative monitoring points for all commercially harvested species in the area.
24. For England & Wales, identifying up to three sampling locations for shellfish and one location for water on each of three separate occasions with the samples analysed for E. coli;
25. For Northern Ireland, identifying up to two sampling locations for shellfish and sea water on each of three separate occasions with the samples analysed for E. coli;
26. The location and timing of the sampling will depend on an assessment undertaken during the desk study. Timing may be considered relative to tidal or weather effects;
27. Salinity measurements may also be undertaken if the area is impacted by rainfall.
28. Sampling should be undertaken in accordance with official protocol and related costs (sampling, transportation and analysis) are factored into the supplier's tender for this element.

CAPACITY

Capability

- FSA requires the Contractor to provide the following levels of capability:

- Provide and maintain suitable IT provision and equipment for carrying out service. This will include but is not restricted to suitable GIS/mapping technology.
- Provide and maintain suitably qualified and trained personnel for carrying out the service;
- Liaise with Local Authorities in relation to carrying out the assessments, as necessary;
- Liaise with relevant sampling contractors, Government Departments and Agencies and other partners as necessary;
- Details of quality control procedures shall be made known to the Agency and be available for audit if requested.

Sanitary Survey Review Timeframe

The Contractor will specify the resource capacity to deliver Assessment reviews, mindful of potential overlap due to delivery timeframes.

The sequencing of delivery is outlined in the table below:

Stage	Timeframe
Desktop Assessment (inc. review & comparison against existing survey)	25 days
FSA review of draft report, recommendations and consideration of Shoreline survey	10 days

Shoreline Survey completion & submission of updated report	25 days
FSA approval of report	5 days
Final Review report sent out for consultation to Interested parties	25 days
Contractor assembly of responses, review / amend report & submit to FSA	10 days
	100 working days total

Sanitary Survey Timeframe

The contractor will specify their capacity to deliver a number of assessments per quarter. The timeframe for delivery of Sanitary Surveys for new areas or changes to existing areas is defined in the table below.

Stage	Timeframe
Desktop assessment draft report	15 days
FSA review draft report & determine / recommend extent of shoreline survey	10 days
Shoreline Survey- Inc. submission of draft/updated report	25 days

FSA review shoreline survey report, findings & consideration of Bacteriological survey	10 days
If triggered- Bacteriological Survey- Inc. draft report to FSA	Additional 75 days
Agree sampling plan with LA	10 days
	70 working days total (excluding Bacteriological assessment)

Contingency

It is essential that the following contingency planning can be provided:

Develop and maintain contingency arrangements for the completion of desktop assessment reports.

Consideration of capacity and timescale to undertake more than one assessment at a time if this is urgent and necessary.

Future Provision

On an ongoing basis, the Agency will review the delivery of this contract to optimise efficiency. Should this identify other locations within England, Wales or Northern Ireland, or duties appropriate to the skills utilised in this contract these may be added by the means of Variation to Contract.

Annex 1

An example of a provisional sampling plan

PRODUCTION AREA	TBC by FSA
SITE NAME	TBC by FSA for existing areas For new areas, proposed by supplier

SIN (Site Identification Number/Reference)	TBC by Cefas upon completion of review/assessment
SPECIES	e.g. Common mussels (<i>Mytillus spp</i>)
TYPE OF FISHERY	e.g. Long-line aquaculture
LOCATION OF RMP	Provide NGR/WGS 84
TOLERANCE (meters- M)	e.g. 100M
DEPTH (meters - M)	e.g. 100M
METHOD OF HARVESTING	e.g. dredging
METHOD OF SAMPLING	e.g. Hand
FREQUENCY OF SAMPLING	e.g.10 monthly samples
PRODUCTION AREA BOUNDARY	The area bounded by lines drawn from - provide NGR/WGS 84 for each point of reference

3. CONTINUOUS IMPROVEMENT

In conjunction with the Client representative, the Supplier shall develop, maintain and improve performance and service with a view to enhancing the overall delivery of service. This may include but shall not be limited to review sessions (formal and informal).

SCHEDULE 3

SPECIFIC OBLIGATIONS

1. SUPPLIER'S OBLIGATIONS

This Schedule 3 specifies the Ordered Services to be provided to the Client by the Supplier in the services required for FS115005. Please see Schedule 3 – “Application form for an evidence gathering project with Food Standards Agency – Research”

This Schedule will be completed by reference to the successful Tenderer's quotation.

Tender Application form for a project with the Food Standards Agency



- Applicants should complete each part of this application as fully and as clearly as possible
- Brief instructions are given in the grey boxes at the start of each section.
- Please submit the application through the Agency's eSourcing Portal (Bravo) by the deadline set in the invitation to tender document.

LEAD APPLICANT'S DETAILS

Surname	Crabb	First Name	Matthew	Initial	M	Title	Mr
Organisation	Carcinus Ltd	Department	Directors				
Street Address	Wessex House, Upper Market Street						
Town/City	Eastleigh	Country	Hampshire	Postcode	SO50 9FD		
Telephone No	02381290095	E-mail Address	Matthew.crabb@carcinus.co.uk				
Is your organisation is a small and medium enterprise . (EU recommendation 2003/361/EC refers http://www.hmrc.gov.uk/manuals/cirdmanual/cird92800.htm)			Yes		No		

TENDER SUMMARY			
TENDER TITLE			
SERVICES FOR DELIVERY OF SANITARY SURVEYS AND SANITARY SURVEY REVIEWS FOR NEW AND EXISTING BIVALVE MOLLUSC HARVESTING IN ENGLAND, WALES AND NORTHERN IRELAND - Lot 1: Sanitary Surveys & Reviews for Bivalve Mollusc Harvesting In England and Wales			
TENDER REFERENCE	FS 115005 / FS315019		
PROPOSED START DATE	01/04/2020	PROPOSED END	31/03/2023
1: TENDER SUMMARY AND OBJECTIVES			
A. TENDER SUMMARY			
Please give a brief summary of the proposed work in no more than 400 words.			
<p>The Food Standards Agency (FSA) are the Central Competent Authority (CCA) in relation to Regulation (EC) 853/2004, specifying the health conditions for the production and placing on the market of Live Bivalve Molluscs (LBM). The FSA must establish the location and boundaries of classified LBM harvesting areas. A bacteriological criterion comprising the faecal coliform indicating bacteria, <i>Escherichia coli</i> is used and the CCA must list and classify harvesting areas per the degree of contamination (<i>E. coli</i>). Determined by samples of LBM flesh collected from a Representative Monitoring Point (RMP) at frequencies prescribed by an evaluation of sources and types of microbiological contamination that may affect LBM production areas (a 'sanitary survey'). The classification determines the required post-harvest treatment for LBMs prior to them being placed on the market for human consumption.</p> <p>It is understood that the tender is split, with each element being based on a new risk-based approach to ensure the protection of human health:</p> <p>Part A: Sanitary survey reviews</p> <p>Sanitary surveys require reviewing when >6 years old or where a change has occurred that results in a change in risk. Such changes may render existing RMPs and sampling plans unrepresentative. The requirements for review shall be in accordance with the Section 2.14 of the EURL Guide to Good Practice on the microbiological monitoring of bivalve mollusc harvesting areas (currently issue 6).</p> <p>Carcinus Ltd proposes to review sanitary surveys deemed necessary by the FSA. For England and Wales, a total of 32 reviews are required (2020 to 2023, with an extra 24 if extended to 2025). All reviews are to be via a risk-based approach, comprising:</p> <ul style="list-style-type: none"> • Initial desk-based assessment - identify any significant changes (since primary survey) in the character of shellfishery(ies) and sources of contamination within the production area • Shoreline survey – if desktop assessment identifies significant risks affecting the production area, seeking to verify the risks and to identify previously unknown risks. • Revision of RMPs and sampling plans • Written report detailing all findings / activities above. <p>Part B: Sanitary surveys</p> <p>Deliver sanitary surveys (~12 per year) for new applications to enable sampling to be initiated at a new LBM bed(s) for classification purposes, comprising a risk-based approach:</p> <ul style="list-style-type: none"> • An initial desktop assessment element; and • A shoreline survey element – only, where the desktop element identifies significant risks to the production area. <p>Where the above do not provide enough information to determine risk, a bacteriological survey element may be required.</p>			
B. OBJECTIVES AND RELEVANCE OF THE PROPOSED WORK TO THE FSA TENDER			
OBJECTIVES			
Please detail how your proposed work can assist the agency in meeting it stated objectives and policy needs. Please number the objectives and add a short description. Please add more lines as necessary.			
OBJECTIVE NUMBER	OBJECTIVE DESCRIPTION		

		<p>[REDACTED]</p>	
SHORELINE SURVEY		OF	
		<p>[REDACTED]</p>	

<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>

<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p>			<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>

[REDACTED]			[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]			[REDACTED]

B. DELIVERABLES

Please outline the proposed project milestones and deliverables. Please provide a timetable of key dates or significant events for the project (for example fieldwork dates, dates for provision of research materials, draft and final reporting). Deliverables must be linked to the objectives.

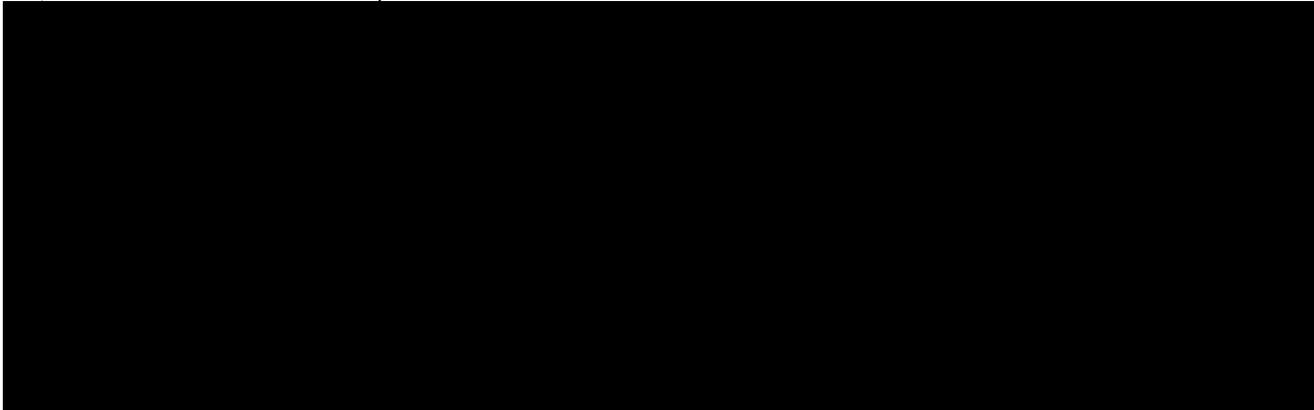
For larger or more complex projects please insert as many deliverables /milestones as required.

Each deliverable should be:

- i. no more 100 characters in length
- ii. self-explanatory
- iii. cross referenced with objective numbers i.e. deliverables for Objective 1 01/01, 01/02 Objective 2 02/01, 02/02 etc

Please insert additional rows to the table below as required.

A final deliverable pertaining to a retention fee of 20 % of the total value of the proposed work will automatically be calculated on the financial template.





2. CLIENT'S OBLIGATIONS

Notwithstanding the collaboration necessary with the Supplier to enable the provision of Support and Development services, the Client shall be responsible for:

- Reporting incidents as soon as possible, and for providing all relevant information to enable the Supplier to progress resolution of the incident

- Provision of suitable premises and facilities such as desks, chairs, overhead projectors, where appropriate and essential to the delivery of services
- Provision of access to the appropriate equipment and sites to enable the Supplier to undertake specific responsibilities in the supply of Support and Development services

3. REVIEW MEETINGS

This Clause shall be developed in conjunction with the successful tenderer(s) dependant on the nature and progress of the services.

The parties shall attend and fully participate in the undernoted meetings.

These shall take place at the Client’s premises at Foss House, York, unless otherwise agreed in which case they could be held by phone or via video-conference.

Meeting	Activities	Inputs	Outputs	Attendees	
<p>SERVICE REVIEW</p> <p>Frequency: Monthly</p>	<ul style="list-style-type: none"> •Review of performance. •Ensure escalated issues and risks are actioned. •Contract Coverage - Ensure all work has been agreed prior to start and is covered under the contract and within a Purchase Order. •Financial Management - Review spend against plans; resolving any escalated invoicing or payment issues. Review of overall financial risk. •Capacity Planning -Reviewing demand and supply forecasts, driving alignment in the relationship, look for economies over time as well as improving ways of matching demand and supply. •Contract Review and Administration -Ensure the contract is kept up to date, review list of amendments 	<ul style="list-style-type: none"> •Agenda / minutes of last meeting •Minutes of Contract Review (where appropriate) •Supplier’s MI •Active PO list / aged debt position •Demand Forecast 	<ul style="list-style-type: none"> •Minutes / actions of meeting •Key messages for Client teams •Key messages for Supplier teams •Rolling forecast of demand 	<p>Client Representative (Chair) (presently XX)</p> <p>Supplier Representative (presently XX)</p> <p>Optional Invitees: Service Delivery Lead (presently XX)</p> <p>Procurement Business Partner (presently XX)</p> <p>Or their nominated deputies</p>	

	and/ or issues that need to be resolved.				
<p>CONTRACT REVIEW</p> <p>Frequency: Every three months</p>	<p><u>Strategic Direction</u> Review the state of the relationship</p> <ul style="list-style-type: none"> •Is the relationship still driving strategic benefits? What have been the major successes and or issues? •Where can the relationship improve to align to the Client strategy and apply consistency • think strategically. <p><u>Relationship Direction</u> •Improvements to the service</p>	<ul style="list-style-type: none"> •Agenda / minutes of last meeting •Minutes of Client business units review meetings •Escalations •Suggested Contract improvements 	<ul style="list-style-type: none"> •Minutes/ actions of meeting •Key messages for Client units 		<p>Primary Budget holder (Chair) (presently XX)</p> <p>Client Representative (presently XX)</p> <p>Procurement Business Partner (presently XX)</p> <p>Supplier Representative (presently XX)</p> <p>Or their nominated deputy</p>

To be agreed with the FSA representative.

SCHEDULE 4

PRICING

This Schedule 4 specifies the Ordered Services to be provided to the Client by the Supplier in the services required for FS115005. Please see Schedule 4 – “Application form for an evidence gathering project with Food Standards Agency – Financials Template”

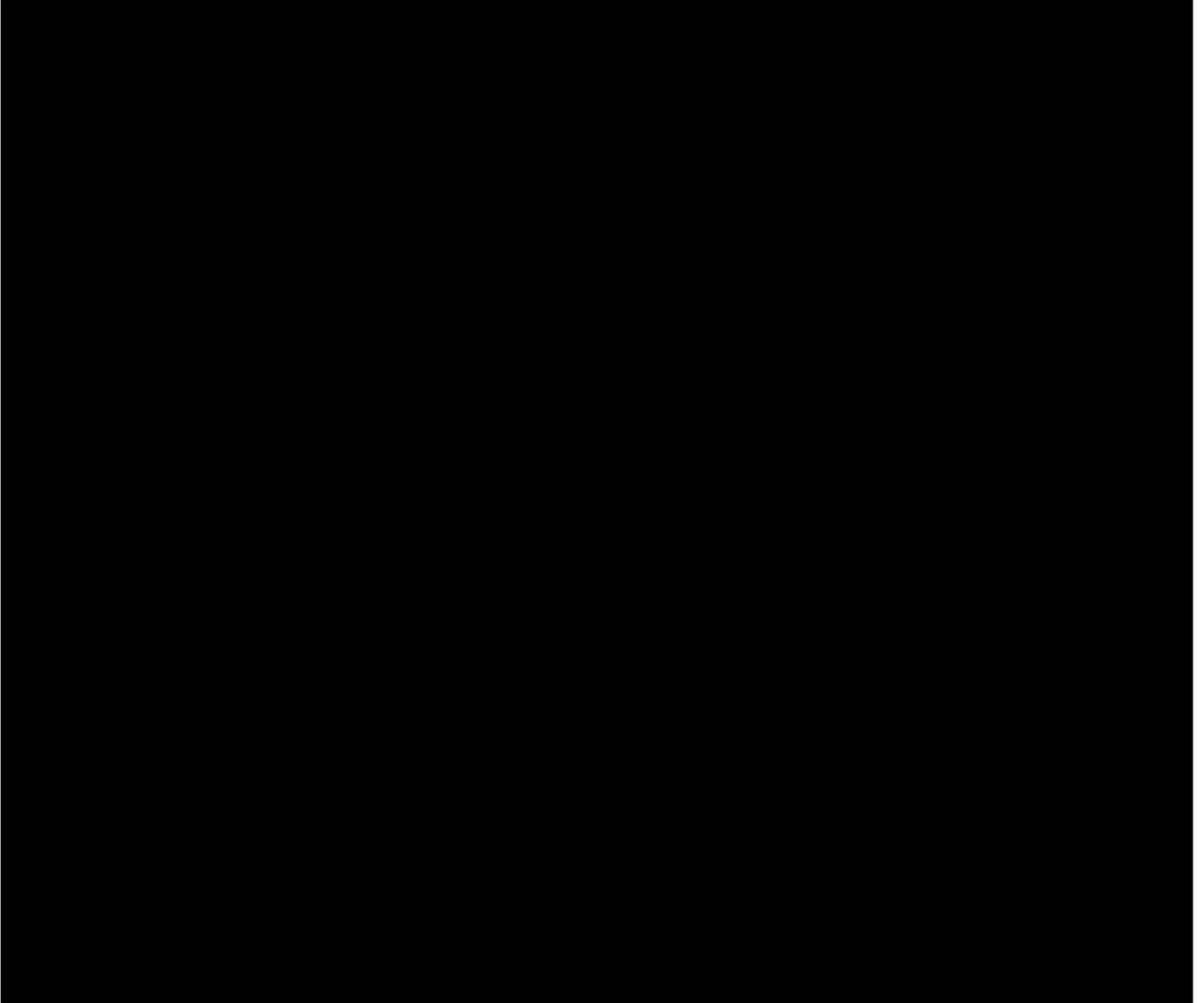
This Schedule will be completed by reference to the successful Tenderer’s quotation.

1. INTRODUCTION

- 1.1 This Schedule 4 sets out the Basis of Charging that shall apply to this Contract and any attendant Purchase Orders.
- 1.1. Other than as provided in this schedule, or agreed in writing in a relevant Purchase Order no additional Charges shall be payable by the Client to the Supplier for any additional costs associated with the execution of the Services or the Deliverables, including, without limitation, administrative and overhead costs.

2. BASIC PRINCIPLES

- 2.1 In general, all prices charged by the Supplier to the Client for all services (Support and Development) throughout the duration of this agreement shall be calculated from the Charges Schedule:



2.2 In addition the Client will reimburse travel and subsistence expenses which are reasonable and agreed in advance as set out in the table below, **where Tenderers have indicated such expenses will be applicable within their Qualifications to Schedule 7, Charges:**

Expenses	Reimbursement
Rail travel	Standard class
Mileage	£0.45 per mile for the first 10,000 miles in a financial year £0.25 per mile for any mileage in excess of 10,000 miles in a financial year
Overnight hotel accommodation	Up to £85 per night outside London Up to £130 per night in London

Subsistence	Up to a maximum of £21 for a 24 hour period
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SCHEDULE 5

INVOICING PROCEDURE & NO PO/NO PAY

1. INVOICES SHALL SPECIFY:

- Trading Name of Supplier
- Supplier Address
- Supplier Tel Number/ E mail
- Unique Purchase Order Number – To be advised
- Invoice Number
- Detailed description of the Services provided
- Detailed description of any expenses and the amounts of such
- Location, date or time period of delivery of the Services and/or Deliverables
- Supplier's VAT number
- Amount due exclusive of VAT, other duty or early settlement discount, with the calculation for the charges clearly shown in terms of days and confirmed daily rate
- VAT rate
- Amount due inclusive of VAT and any other duty or early settlement discount
- Details of the Supplier's BACS details or other method of payment
- Date of the invoice.

2. INVOICE SUBMITTAL

Invoicing the FSA:

Please submit invoices to [REDACTED] for work with FSA.

Please include the referring FSA purchase order number in the email title and within the invoice to allow Invoice/Purchase Order matching.

Note that invoices that do not include reference to FSA Purchase Order number will be returned unpaid with a request for valid purchase order through email.

3. INVOICE PAYMENT

3.1 The Client shall pay all valid invoices submitted in accordance with the provisions of this Schedule 3 in accordance with the provisions of [Clause 7](#).

3.2 In the event of a disputed invoice, the Client shall make payment in respect of any undisputed amount in accordance with the provisions of [Clause 7](#) and return the invoice to the Supplier within ten (10) Working Days of receipt with a covering statement proposing amendments to the invoice and/or the reason for any non-payment. The Supplier shall respond within ten (10) Working Days of receipt of the returned invoice stating whether or not the Supplier accepts the Client proposed amendments. If it does then the Supplier shall supply with the response a replacement valid invoice. If it does not then the matter shall be dealt with in accordance with the provisions of [Clause 18](#).

3.3 NO PURCHASE ORDER, NO PAY.

The Food Standards Agency is currently moving purchasing activity to an electronic purchasing solution. This brings supplier organizations a number of benefits, including limiting purchasing to preferred suppliers and faster payment processing.

To implement the solution, the undernoted changes will be implemented with effect from the contract commencement date.

To prevent unauthorised individuals requesting goods and services only FSA branded Purchase Orders from these email addresses should be accepted as FSA commitment: [REDACTED]; OR

[REDACTED] The FSA will not pay invoices that do not originate from Purchase Orders from these email addresses.

Any other requests for goods or services from the FSA should be referred to the Procurement Business Partner.

4. CORRESPONDENCE

Correspondence to the Client relating to this Contract (but not the invoice) shall be [REDACTED] ed and sent to the following address:

[REDACTED]

Correspondence to the Supplier relating to this Contract shall be appropriately referenced and sent to the following address:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

SCHEDULE 6**DISPUTE RESOLUTION PROCEDURE****1. INTRODUCTION**

- 1.1. In the event that a dispute cannot be resolved by the Client and Supplier representatives nominated under [Clause 18.2](#) within a maximum of ten (10) Working Days after referral, the dispute shall be further referred to mediation in accordance with the provisions of [Clause 18.4](#).
- 1.2. Subject always to the provisions of [Clause 21](#), nothing in this dispute resolution procedure shall prevent the Client or the Supplier from seeking from any court of the competent jurisdiction an interim order restraining the other party from doing any act or compelling the other to do any act.

2. MEDIATION

- 2.1. The procedure for mediation pursuant to [Clause 18](#) and consequential provisions relating to mediation shall be as follows:
 - 2.1.1. a neutral adviser or mediator ('the Mediator') shall be chosen by agreement between the Client and the Supplier or, if they are unable to agree upon the identity of the Mediator within ten (10) Working Days after a request by one party to the other (provided that there remains agreement for mediation), or if the Mediator agreed upon is unable or unwilling to act, either party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ('CEDR') to appoint a Mediator;
 - 2.1.2. the Client and the Supplier shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. The parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure.

- 2.2. Unless otherwise agreed by the Client and the Supplier, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
- 2.3. In the event that the Client and the Supplier reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on both parties once it is signed by the Client's Head of Procurement and the Supplier.
- 2.4. Failing agreement, either the Client or Supplier may invite the Mediator to provide a non-binding but informative opinion in writing.
- 2.5. The Client and the Supplier shall each bear their own costs in relation to any reference made to the Mediator and the fees and all other costs of the Mediator shall be borne jointly in equal proportions by both parties unless otherwise directed by the Mediator.
- 2.6. Work and activity to be carried out under this Contract shall not cease or be delayed during the mediation process.
- 2.7. In the event that the Client and the Supplier fail to reach agreement in the structured negotiations within forty (40) Working Days of the Mediator being appointed, or such longer period as may be agreed, then any dispute or difference between them may be referred to the Courts in accordance with the provisions of [Clause 41](#).

SCHEDULE 7

CONFIDENTIALITY UNDERTAKING

1. INTRODUCTION

1.1. This Schedule 7 contains the model confidentiality undertaking to be signed by Supplier in the event of Contract Award.

CONFIDENTIALITY UNDERTAKING

I ***THE SUCCESSFUL TENDERER*** HAVE BEEN INFORMED THAT I MAY BE ASSIGNED TO WORK AS A SUPPLIER IN PROVIDING SERVICES TO THE FOOD STANDARDS AGENCY.

I UNDERSTAND THAT INFORMATION IN THE POSSESSION OF THE CLIENT MUST BE TREATED AS CONFIDENTIAL.

I HEREBY GIVE A FORMAL UNDERTAKING TO THE CLIENT, THAT:

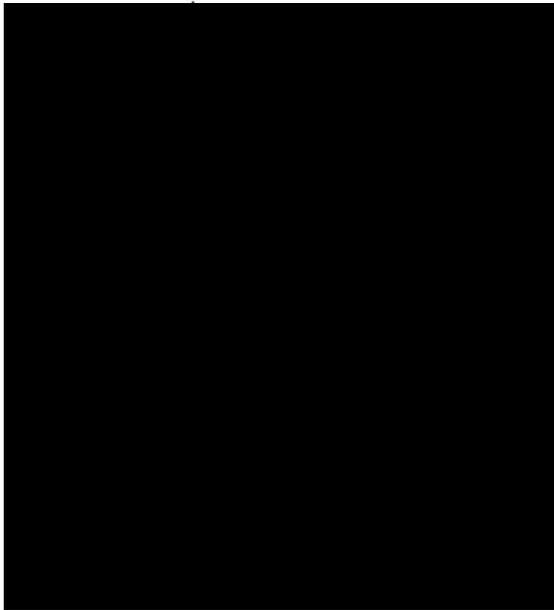
1. I WILL NOT COMMUNICATE ANY OF THAT INFORMATION, OR ANY OTHER KNOWLEDGE I ACQUIRE IN THE COURSE OF MY WORK FOR THE CLIENT TO ANYONE WHO IS NOT AUTHORISED TO RECEIVE IT IN CONNECTION WITH THAT WORK.

2. I WILL NOT MAKE USE OF ANY OF THAT INFORMATION OR KNOWLEDGE FOR ANY PURPOSE OUTSIDE THAT WORK.

I ACKNOWLEDGE THAT THIS APPLIES TO ALL INFORMATION WHICH IS NOT ALREADY A MATTER OF PUBLIC KNOWLEDGE AND THAT IT APPLIES TO BOTH WRITTEN AND ORAL INFORMATION.

I ALSO ACKNOWLEDGE THAT THIS UNDERTAKING WILL CONTINUE TO APPLY AT ALL TIMES IN THE FUTURE, EVEN WHEN THE WORK HAS FINISHED AND WHEN I HAVE LEFT MY EMPLOYMENT.

I HAVE ALSO BEEN INFORMED THAT I WILL BE BOUND BY THE PROVISIONS OF THE OFFICIAL SECRETS ACTS OF 1911 AND 1989. I AM AWARE THAT UNDER THOSE PROVISIONS IT IS A CRIMINAL OFFENCE FOR ANY PERSON EMPLOYED BY A GOVERNMENT SUPPLIER TO DISCLOSE ANY DOCUMENT OR INFORMATION WHICH IS LIKELY TO RESULT IN AN OFFENCE BEING COMMITTED, OR WHICH MIGHT PROVIDE ASSISTANCE IN AN ESCAPE FROM LEGAL CUSTODY OR ANY OTHER ACT AFFECTING THE DETENTION OF PEOPLE IN LEGAL CUSTODY. I AM AWARE THAT SERIOUS CONSEQUENCES MAY FOLLOW FROM ANY BREACH OF THAT ACT.



Schedule 8 – Staff Transfer – “TUPE”

Not applicable

Schedule 9 – Commercially Sensitive Information

None identified

Schedule 10 – Variation Notice – Request for Variation**1 General principles of the Variation Procedure**

- 1.1 This Schedule sets out the procedure for instruction and evaluation of Variations to the Framework.
- 1.2 Under this Variation procedure:
 - 1.2.1 Either party may seek to vary the Service(s) at any time during the Term of the Framework. Each party will do its utmost to give the other reasonable notice of any major changes, preferably a minimum of 3 months notice, and to respond within the timeframe stated in Clause 24.
 - 1.2.2 Variation requests are to be submitted using the format at Appendix A.
 - 1.2.3 Where a Variation is proposed, the Supplier will provide an estimate of the financial/resource implications to the Client, with an estimated timetable for implementation, for the Client's approval.
 - 1.2.4 The evaluation of any Variation is the responsibility of the relevant Director and Head of Procurement, in consultation with the Supplier, in the context of the Review Meetings described in Governance contained in the Framework. The date of implementation of any consequent amendment to the services, and/or payment to the Supplier, will be confirmed in writing by the Client within seven days of the evaluation using the Variation Form at Appendix B.
 - 1.2.5 The Client shall have the right to request amendments to a Variation Request (prior to approval); approve it or reject it. The Supplier shall be under no obligation to make such amendments to the Variation Request; however the Supplier shall not unreasonably refuse such a request. In the event that the Client chooses to reject a Variation Request made by the Supplier the Client shall accept responsibility for the outcome.
- 1.3 Any discussions, negotiations or other communications which may take place between the Client and the Supplier in connection with any proposed variation shall be without prejudice to each party's other rights under this Framework.

2 Costs

- 2.1 Each party shall bear its own costs in relation to the preparation and agreement of each Variation.

3 Change Authorisation

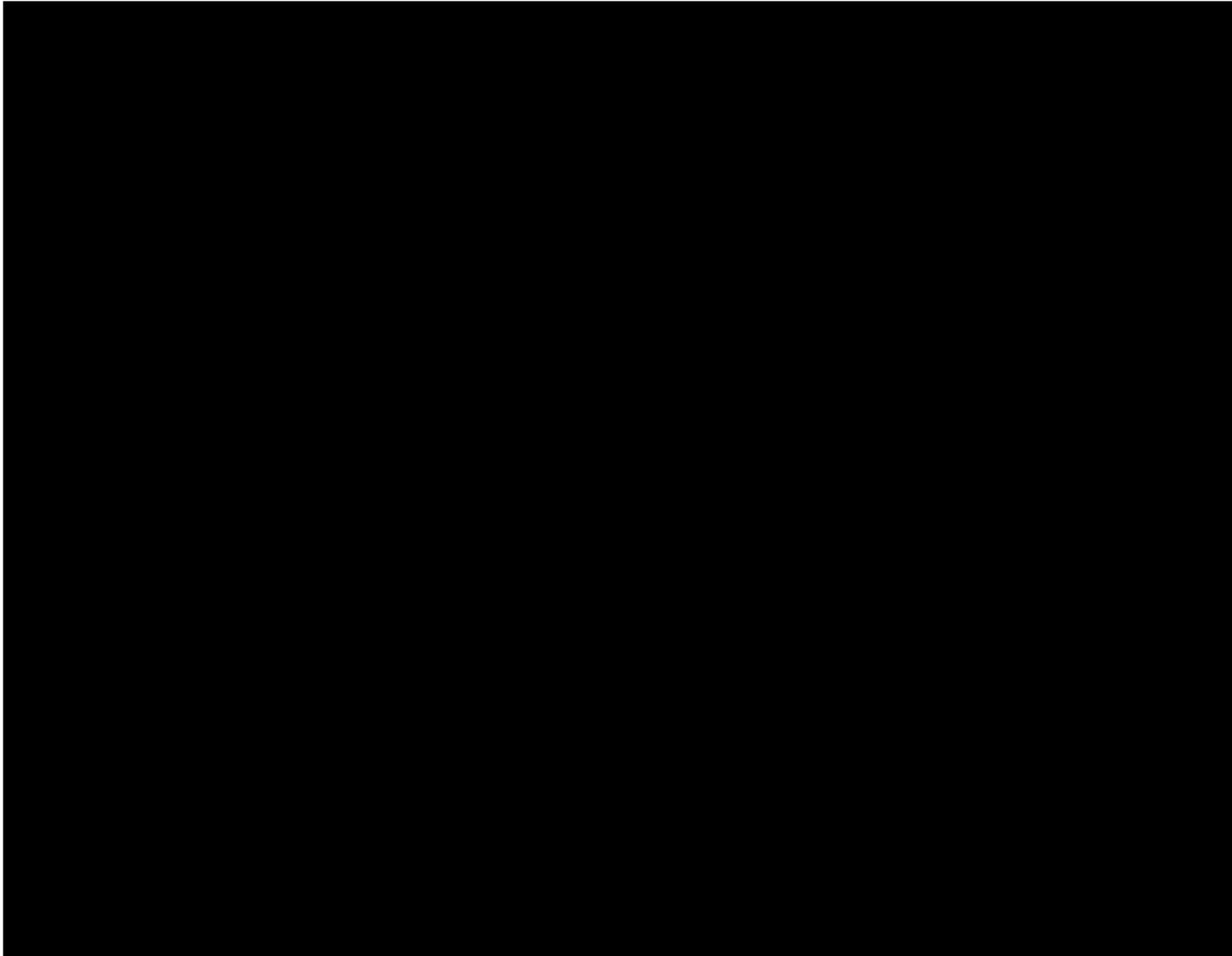
- 3.1 Any Variation and/or amendment to payment arising from a Variation will be executed by the Client's Head of Procurement and confirmed in writing to the Supplier.
- 3.2 The variation shall not be deemed effective until the Variation form at Appendix B has been signed by both parties.

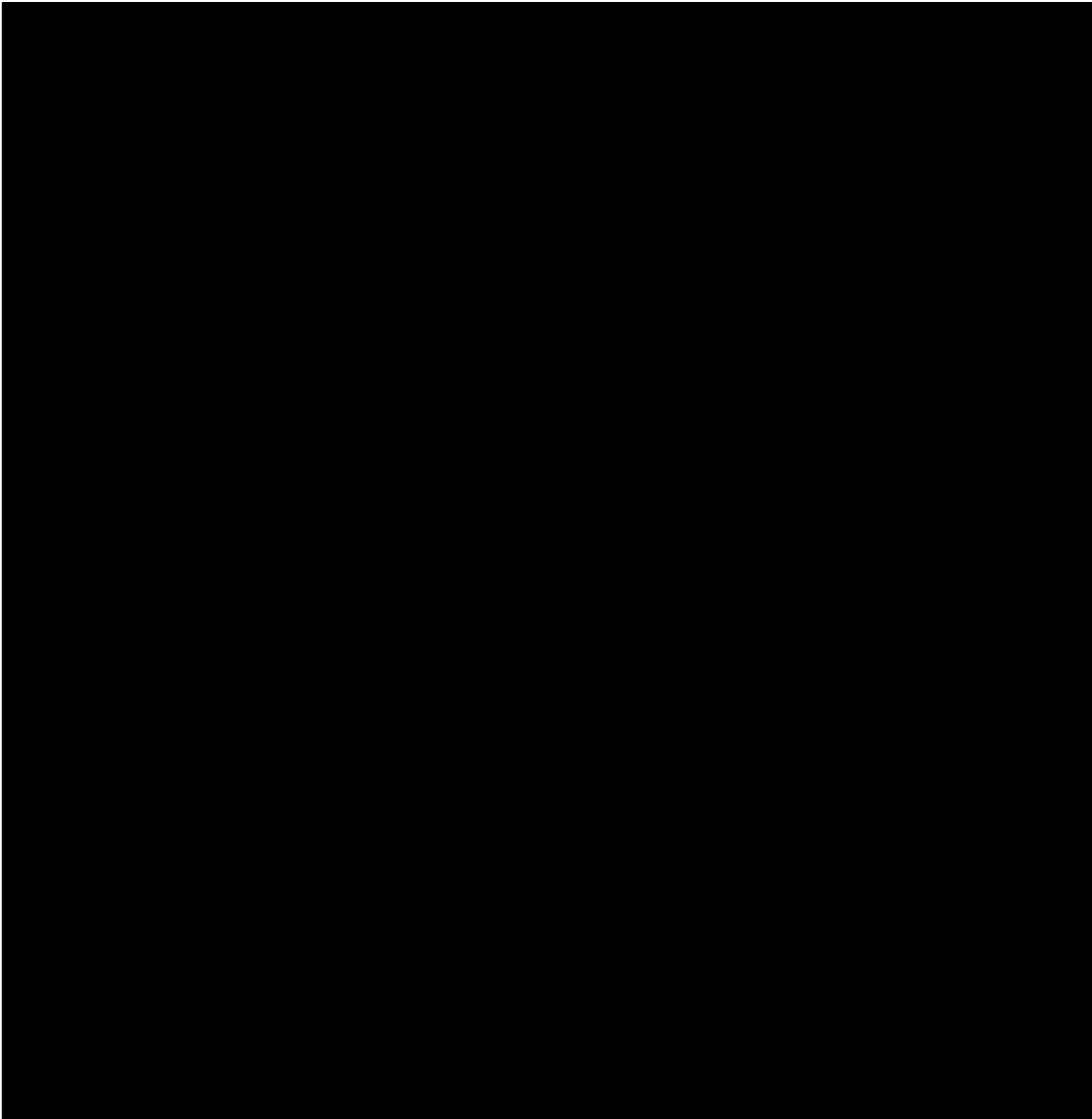
Schedule 11 – Exit Management

If Applicable this will be agreed between both parties within 6 months of the contract start.

Schedule 12 Processing, Personal Data and Data Subjects

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.





**APPENDIX A VARIATION REQUEST FORM**

Variation Request No:
Date:
Project Title :
Project Ref No:
Raised By:
Action Proposed:
Full Description of Variation Request:
Area(s) impacted (<i>Optional</i>)
Signed By:
Full Name:
Date:
Supplier Contact Details
Supplier Name :

Contact Name	:	
Contact Address	:	
	:	
	:	
	:	
Telephone No	:	
Email Address	:	



APPENDIX B VARIATION FORM

PROJECT TITLE:

DATE:

VARIATION No:

BETWEEN:

The Food Standards Agency (hereinafter called "the Client") & SUPPLIER (hereinafter called "the Supplier")

1. The Contract is varied as follows:

Contract

x

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

SIGNED:

For: The Client

For: The Supplier

By:

By:

Full Name: ..

Full Name:

Position:

Title:

Date:

Date:

Table of Policies



APPENDIX C TABLE OF POLICIES

Policy	Description	Includes:
Acceptable Use of Computers and Networks	<p>The Food Standards Agency provides networks and equipment to its staff to be used as a source of business information which supports the work of the Agency. Inappropriate use of the Agency's networks exposes the Food Standards Agency to risks including virus attacks, compromise of network systems and services, and legal issues.</p> <p>The Acceptable Use Policy sets out the ways in which the network and systems may be used, safeguarding the FSA and its employees against potential legal action and protecting the security of the Agency's IT infrastructure. It is vital in informing the agency's employees of the behaviour expected of them as users of our Information Technology systems.</p>	<ul style="list-style-type: none"> - Use of Internet and Intranet - Working Remotely - Personal Web Logs and Websites
Data Protection	<p>The Data Protection Act defines UK law on the processing of data about living people. In order to process personal data and sensitive personal data the Food Standards Agency must comply with the Principles of the Act. Failure to comply could result in the Agency or the individual involved having criminal or civil proceedings brought against them.</p> <p>The Food Standards Agency is committed to protecting personal data and as such the Data Protection Policy was created to safeguard the Agency and its employees by informing staff of their responsibilities and rights when handling personal data.</p>	<ul style="list-style-type: none"> - Processing Personal Data - Sensitive Personal Data - Failure to Comply - Data Subject
Information and Records Management Policy	<p>Food Standards Agency information and records are valuable assets that play a vital role in documenting the policy making and inspection activities of the Agency. Best practice in records management is vital in supporting the</p>	<ul style="list-style-type: none"> - Organisational Records Management Requirements - Records Standards - Registration Records Management

	<p>Agency to deliver its strategic plan, document business intelligence, demonstrate accountability and protect its interests.</p> <p>The Information and Records Management Policy informs users of their responsibilities when handling information and records and allows the Agency to maintain a framework of standards to maintain compliance with the Public Records Act 1958, Freedom of Information Act and ISO 27001.</p>	<p>process and System Requirements</p> <ul style="list-style-type: none"> - Technical specification of records - Access to records - Security of records - Preservation of records
Electronic Communications	<p>The Food Standards Agency provides and encourages the use of its Electronic Communication Systems to its employees for the purposes of business communication. This policy has been developed to ensure the Electronic Communications Systems are safeguarded for the efficient exchange of business information within the Food Standards Agency and to ensure that all employees are made aware of their responsibilities and adhere to the relevant legislations.</p>	<ul style="list-style-type: none"> - Electronic Mail (Email) - Personal Use - Use of Instant Messaging
Users ICT Security Policy (for all staff)	<p>Security is required to counter threats from external penetration, internal users and environmental events beyond FSA control. Appropriate measures must be in place to control access, preserve the confidentiality, integrity and availability of data and protect each ICT system. In addition the Agency must ensure security standards are maintained to satisfy the requirements of legislation, the HMG Security Policy Framework and industry standards such as ISO27001. This policy defines the FSA security principles and measures to ensure employees understand their responsibilities, managers can identify what is expected of staff and auditors can ascertain that the correct measures are being applied.</p>	<ul style="list-style-type: none"> - Passwords -Mobile Computing and Remote Access -Virtual Private Networks - Secure Data Storage -Data Backup and Recovery -Workstation Security -Encryption -Software Movements - Security of Equipment Off-Premises -Removal of Property -Secure Equipment Storage and Access
ICT Security Policy (for IT staff ONLY)	<p>This policy is for ISTED staff only</p> <p>The purpose of the policy is as above but with greater detail and extended content in recognition of the increased system access ISTED staff require, and to ensure standards in the development/support/maintenance of our systems are met. It was recognised that detailing the principles that apply to both users and ISTED staff within one length security policy confused the key issues and areas of responsibility and alienated the user audience.</p>	<ul style="list-style-type: none"> -Mobile Computing and Remote Access -Passwords -Network Security - Perimeter Management -Secure Data Storage -Data Backup and Recovery -Encryption -Agency Software -Software Rollout - Software & Hardware Disposal - Software Movements -Software Audit -Patch Management - Equipment Security -Supporting Utilities -Cabling Security - Equipment Maintenance -Security of Equipment Off-Premises -Removal of Property -Secure Equipment Storage and Access -ICT Systems Security -Control of Development Environments -Change Control

		<p>Design and Acceptance of Development -Contingency Planning -Technical Compliance Checking -Technical Review of Operating System Changes</p>
<p>Mobile Voice and Data Policy</p>	<p>The FSA did not have policy for the supply of mobile voice and data tools for Agency staff e.g. Laptops and Blackberries. A policy was needed to allow potential suppliers to give an accurate quote for services, driving better value for money for the FSA. The policy was developed to maximise the efficiency of the mobile voice and data contracts by ensuring that the right people have the right equipment to fulfil their roles. The policy sets out criteria by which these tools are issued together with the a principle that each user will be issued with only one mobile data contract.</p>	<p>-Definition of FSA Remote working tools -Connectivity options - Computer Equipment -Who is eligible -Roles & responsibilities</p>