

GENERAL CONDITIONS OF AGREEMENT

1. DEFINITIONS

1.1 In these Conditions:

"the Agreement" means the agreement concluded between the Food Standards Agency (FSA) and the Local Authority consisting of these Conditions and any other documents (or parts thereof) specified in the Agreement;

"the FSA" means the Chairman of the Food Standards Agency or his appointed agent in the Agreement;

"the FSA's Representative" shall mean the person authorised to act on behalf of the Chairman of the Food Standards Agency.

"the Local Authority" means local authority or port health authority named in the Agreement;

"the Project" means the purpose for which the grant is made as specified in the Agreement and shall, where the context so admits, include any goods and services to be supplied thereunder;

"approved" or "approval" means approved in writing; the masculine includes the feminine and the singular includes the plural, and vice versa.

2. VARIATION

2.1 Any alteration to the Agreement shall be agreed in writing by both parties.

2.2 Any instruction issued orally shall have no effect until confirmed by a written notice.

3. THE GRANT

3.1 The Grant will be **exclusive** of any relevant VAT and shall remain firm and fixed at the level set in the Signed Agreement, which will be up to the level bid for by the Local Authority, for the duration of the Agreement. The specific activities outlined in this proposal should not already form part of programmed expenditure plans for this area of the local authority's work.

3.2 The Grant shall be used solely for the purposes set out at Annex A, and is repayable to FSA if not so used.

3.3 The Local Authority is required to provide a full account of expenditure in respect of the project at the end of the project. This will set out costs incurred during the project separately. This account must be signed by an appropriate financial officer for the Local Authority.

3.4 The individual named as the Local Authority's Representative shall be the accountable officer responsible for the grant and its use to carry out the Project.

3.5 If capital assets are created ownership may revert to FSA if appropriate.

4. PAYMENT

- 4.1 Payment will be made at the stages set out in the table below. The final payment of 50% will not be made until receipt of an End of Project Report. The final invoice should be submitted with the End of Project Report. Payment at both stages will be made within 30 days of receipt of a correctly supported invoice.

Percentages to be paid at each stage are:

Start of contract	50%
Delivery of End of Project Report	50%

5. LOCAL AUTHORITY'S STATUS

- 5.1 In carrying out the Agreement the Local Authority shall be acting as principal and not as the agent of the FSA. Accordingly:
- (a) the Local Authority shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Local Authority is acting as the agent of the FSA; and
 - (b) nothing in this Agreement shall impose any liability on the FSA in respect of any liability incurred by the Local Authority to any other person but this shall not be taken to exclude or limit any liability of the FSA to the Local Authority that may arise by virtue of either a breach of this Agreement or any negligence on the part of the Authority, his staff or agents.

6. TIME OF PERFORMANCE

- 6.1 The Local Authority shall complete the project, including provision of an End of Project Report to the Agency, no later than 30 April 2010.
- 6.2 The FSA may by written notice require the Local Authority to execute the Project in such order as the FSA may decide. In the absence of such notice the Local Authority shall submit such detailed programmes of work and progress reports as the FSA may from time to time require.

7. AUDIT

- 7.1 The Local Authority shall keep and maintain until three years after the Agreement has been completed records to the satisfaction of the FSA of all expenditures which are reimbursable by the FSA and of the hours worked and costs incurred in connection with any employees of the Local Authority paid for by the FSA on a time charge basis.
- 7.2 The Local Authority shall on request afford the FSA or his representatives such access to those records as may be required by the FSA in connection with the Agreement.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 The Local Authority hereby assigns to the FSA all Intellectual Property Rights (IPR) owned by the Local Authority in any material which is generated by the Local Authority and delivered to the FSA in the performance of the Services and shall waive all moral rights relating to such material.
- 8.2 In performing the Services the Local Authority shall not infringe the IPR of any third party. Where there are prior rights or rights of third parties in any material, the Local Authority shall obtain Approval before using the material and this Approval shall include the right of the FSA to use, copy, modify adapt or enhance the material.
- 8.3 The Local Authority shall indemnify the FSA and the Crown against all actions, suits claims, demands losses, charges, costs and expenses which the FSA or the Crown may suffer or incur as a result of or in connection with any breach of this Condition.
- 8.4 Subject to any prior rights and to the rights of third parties, copyright and every other property right in all reports, documents and things produced or information obtained by the Local Authority or which is prepared or obtained under the Local Authority's direction or control under this Agreement shall be vested as copyright in the Crown.
- 8.5 Without prejudice to Condition 7 - Right of Audit, the Local Authority and his sub-contractors shall not disclose any specifications, plans, instructions, drawings, patents, models or other information obtained pursuant to or by reason of this Agreement, without the written permission of the FSA.
- 8.6 The Local Authority and his sub-contractor's shall not refer to the FSA in any advertisement without the FSA's written consent.
- 8.7 The provisions of this Condition shall apply during the continuance of this Agreement and after its termination howsoever arising, without limitation of time.

9. INDEMNITY AND INSURANCE

- 9.1 The Local Authority warrants that it will use its best endeavours to avoid damage to property or injury to persons in carrying out the Agreement.
- 9.2 Without prejudice to any rights or remedies of the FSA the Local Authority shall indemnify the FSA and the Crown against all actions, suits, claims, demands, losses, charges, costs and expenses which the FSA or the Crown may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from carrying out the Agreement or the negligent or wrongful act or omission of the Local Authority.
- 9.3 The Local Authority shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities under these Conditions. The level of cover shall take into account the liability which may be incurred given the nature of the work to be undertaken. At the request of the FSA the Local Authority shall produce the relevant policy or policies together with the receipts or other evidence of payment of the latest premium due thereunder. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Local Authority.

10. CONFIDENTIALITY

- 10.1 The Local Authority undertakes to treat any information derived from or obtained in the course of the Agreement as confidential and to take all the necessary precautions to ensure that his employees and sub-contractors and their employees treat any information as confidential and in doing so the Local Authority shall ensure that his employees and sub-contractors and their employees keep secret and not disclose information of a confidential nature obtained by him or them by reason of this Agreement.
- 10.2 The provision of paragraph 10.1 shall apply during the continuance of this Agreement and after its termination howsoever arising without limitation of time.
- 10.3 The restriction on disclosure shall not apply to information to the extent that it:
- is required to be disclosed by law (including under the Freedom of Information Act 2000) or by any governmental or other regulatory authority acting within the scope of its powers;
 - is or becomes part of the public domain through no fault of the receiving party;
 - is known to the receiving party prior to the disclosure by the disclosing party without an obligation to keep such information confidential;
 - is subsequently furnished by the disclosing party to a third party without restriction on disclosure or use;
 - is subsequently obtained by the receiving party from a third party without breach of any obligation of confidentiality owed to any third party or the disclosing party;
 - is independently developed by the receiving party or within the receiving party's group without any breach of this agreement; or
 - Is approved for public release by the disclosing party.

11. RECOVERY OF SUMS DUE FROM THE LOCAL AUTHORITY

- 11.1 The deadlines set out in paragraph 6.1 of these conditions remain fixed. Future payments may be withheld and the Agency may recover payments already made if these deadlines are not met.
- 11.2 Wherever under this Agreement any sum of money is recoverable from or payable by the Local Authority, such sum may be deducted from any sum or sums then due or which at any time thereafter may become due to the Local Authority under this Agreement or under any other agreement or Agreement with the FSA or with any department, agency or authority of the Crown.

12. DEFAULT

- 12.1 Should there, in the sole opinion of the FSA be any failure on the part of the Local Authority to perform any obligation or service required of him under this Agreement, or should the Local Authority be otherwise in breach of any condition of the Agreement, the FSA may, without prejudice to any other rights, remove part or whole of the work required to be performed under this Agreement, or terminate this Agreement summarily; and if the FSA should then make alternative arrangements for the performance of the Contracts by a third party the FSA shall be entitled to recover from the Local Authority any additional expense incurred over the remaining term of

this Agreement. Under such circumstances no further payments which may become due to the Local Authority shall be paid until the full cost of re-establishing the Agreement with the third party have been established.

13. TERMINATION

13.1 In addition to the rights of termination under paragraph 12 the FSA shall be entitled to terminate this Agreement by giving to the Local Authority not less than sixty days notice to that effect.

13.2 Termination under paragraphs 12 or 13 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the FSA and shall not affect the continued operation of any other conditions included in this Agreement.

14. ASSIGNMENT AND SUB-CONTRACTING

14.1 The Local Authority shall not without the written consent of the FSA assign or sub-Contract the whole or any part of this Agreement. No sub-contracting by the Local Authority shall in any way relieve the Local Authority of any of his responsibilities under this Agreement even with the consent of the FSA as aforesaid

14.2 Where the Local Authority enters into a sub-contract for the purpose of performing the Agreement, or part thereof, he shall cause a term to be included in such sub-contract which requires payment to be made to the sub-contractor within the specified period not exceeding thirty (30) days from receipt of a valid invoice as defined by the sub-contract requirement.

15. NOTICES

15.1 Any notice given under or pursuant to the Agreement may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, telemesssage, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the face hereof, or to such other address as the party may by notice to the other have substituted therefore, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

16. SEVERABILITY

16.1 If any condition or provision of this Agreement is held to be illegal or unenforceable the validity or enforceability of the remainder of this Agreement shall not be affected.

16.2 If any portion of this Agreement shall be terminated or amended by written notice, for any reason whatsoever, such limited termination or amendment shall not affect the Agreement as a whole and the remaining portion of the Agreement shall remain unaffected and intact.

17. WAIVER

- 17.1 The failure of either party at any time to enforce any provision of the Agreement shall in no way affect its rights thereafter to require complete performance by the other party, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any provision itself.

18. GOVERNING LAWS

- 18.1 These Conditions shall be governed by and construed in accordance with English law and the Local Authority hereby irrevocably submits to the jurisdiction of the English courts.
- 18.2 The Local Authority shall comply with all and any laws, Acts of Parliament, enactments, orders, regulations or other similar instruments which may, in any way, pertain to the performance of this Agreement. Breach of any such laws, Acts, enactments, orders, regulations or other similar instruments shall be deemed a breach of this Agreement.
- 18.3 Reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order regulation or instrument.

19. HEADINGS

- 19.1 The headings to Conditions shall not affect their interpretation.