**Annex E: General Conditions of Agreement**

# 4.1 DEFINITIONS

## In these Conditions:

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

"FSS" means the Chief Executive of Food Standards Scotland or his appointed agent in the Agreement;

“FSS’ Representative” shall mean the person authorised to act on behalf of the Chief Executive of Food Standards Scotland;

"the Local Authority" means the local authority named in the Agreement;

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

"approved" or "approval" means approved in writing;

the masculine includes the feminine and the singular includes the plural, and vice versa.

# 4.2 THE AGREEMENT

## The Agreement shall be fixed at a specific limit per authority and shall remain firm and fixed for the duration of the Agreement. The Agreement does not limit the local authority from obtaining other funding for the project, but the specific activities outlined in this proposal should not already form part of programmed expenditure plans for 2015/16.

## The funding agreed shall be used solely for the purposes set out in this Agreement, and is repayable to FSS if not so used.

## The individual named as the local authority’s representative shall be the accountable officer responsible for the funding application and its use to carry out the project.

# 4.3 AGREEMENT DURATION

The local authority shall begin the project from 1 April 2015 and shall complete sampling by 31 March 2016 with results being uploaded on to UKFSS by 31 May 2016.

## FSS may require written notice from the local authority to execute the project in such order as FSS may decide. In the absence of such notice the local authority shall submit such detailed programmes of work and progress reports as FSS may from time to time require.

# 4.4 VARIATION

## Any alteration to the Agreement shall be agreed in writing by both parties. Any instruction issued orally shall have no effect until confirmed by a written notice. Control of this document shall rest with FSS and only the FSS Representative has the authority to raise variations to the Agreement for the signed agreement of both parties

# 4.5 PAYMENT

## Payment will be made within 30 days of receipt and agreement of invoices, submitted quarterly in arrears, for work completed.

4.5.1 Payment Mechanism

#### FSS will distribute the funding directly to the LA within 30 days of receipt of invoiced work. The payments will be made in arrears by means of a standard application form signed by a designated officer in the LA, normally Director of Finance.

It is expected that the money will be spent in the financial years specified in Section 2 - Outline of Requirements.

4.5.2 Invoice Content

Invoices shall specify:

* Local Authority name
* Local Authority address
* Local Authority telephone number/ e mail
* Unique Purchase Order number
* Invoice number
* The numbers of inspections completed
* The period when the inspections were completed
* Details of the Supplier’s BACS details or other method of payment
* Date of the invoice

4.5.3 Submission of Invoices

Invoices shall be submitted to [finance@fss.scot](mailto:finance@fss.scot) and must always include the referring FSS purchase order number in the email title and within the body of the invoice to allow Invoice/Purchase Order matching.

4.5.4 No Purchase Order No Pay

FSS operates an electronic purchasing solution. This brings supplier organisations a number of benefits, including limiting purchasing to preferred suppliers and faster payment processing. Any invoices that do not include reference to FSS Purchase Order number will be returned unpaid with a request for a valid purchase order number.

4.5.5 Monitoring Expenditure

Both parties have a responsibility to monitor funding to identify any potential over/under spend in the Agreement. LAs must notify FSS as early as possible of any known deviations from the agreed number of inspections or timings.

# 4.6 LOCAL AUTHORITY

## In carrying out the Agreement the local authority shall be acting as principal and not as the agent of FSS. Accordingly:

## 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 FSS; and

1. nothing in this Agreement shall impose any liability on FSS 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 Authority 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.

# 4.7 AUDIT

## The LA shall keep and maintain all expenditures which are reimbursable by the FSS, such as the hours worked and costs incurred in connection with any employees of the LA paid for by the FSS on a time charge basis, for a period of 3 years after completion of the Agreement.

## The local authority shall on request afford FSS or his representatives such access to those records as may be required by the FSS in connection with the Agreement.

4.8 INTELLECTUAL PROPERTY RIGHTS

## The local authority hereby assigns to FSS all Intellectual Property Rights (IPR) owned by the local authority in any material which is generated by the local authority and delivered to FSS in the performance of the services and shall waive all moral rights relating to such material.

## 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 FSS to use, copy, modify adapt or enhance the material.

## The local authority shall indemnify FSS and the Crown against all actions, suits claims, demands losses, charges, costs and expenses which FSS or the Crown may suffer or incur as a result of or in connection with any breach of this condition.

## 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.

## Without prejudice to Condition 4.7 - 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 FSS.

## The local authority and his sub-contractors shall not refer to FSS in any advertisement without the written consent of FSS.

## The provisions of this Condition shall apply during the continuance of this Agreement and after its termination howsoever arising, without limitation of time.

# 4.9 INDEMNITY AND INSURANCE

## 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.

## Without prejudice to any rights or remedies of FSS the local authority shall indemnify FSS and the Crown against all actions, suits, claims, demands, losses, charges, costs and expenses which FSS 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.

## 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 FSS produce the relevant policy or policies together with the receipts or other evidence of payment of the latest premium due there under. 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.

# 4.10 CONFIDENTIALITY

## 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.

# 4.11 RECOVERY OF SUMS DUE FROM THE LOCAL AUTHORITY

## 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 FSS or with any department, agency or authority of the Crown.

The provision of this paragraph shall apply during the continuance of this Agreement and after its termination howsoever arising without limitation of time.

# 4.12 DEFAULT

## Should there, in the sole opinion of FSS, 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, FSS 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 FSS should then make alternative arrangements for the performance of the Contracts by a third party FSS 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.

# 4.13 TERMINATION

## In addition to the rights of termination under paragraph 4.12 FSS shall be entitled to terminate this Agreement by giving to the local authority not less than sixty days’ notice to that effect.

## Termination under paragraphs 4.12 or 4.13 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to FSS and shall not affect the continued operation of any other conditions included in this Agreement.

# 4.14 ASSIGNMENT AND SUB-CONTRACTING

## The local authority shall not without the written consent of FSS assign or sub-Contact 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 FSS as aforesaid.

## 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.

# 4.15 NOTICES

## 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, telemessage, 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.

# 4.16 SEVERABILITY

## 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.

## 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.

# 4.17 WAIVER

## 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.

# 4.18 GOVERNING LAWS

## These Conditions shall be governed by and construed in accordance with Scottish law and the local authority hereby irrevocably submits to the jurisdiction of the Scottish courts.

## 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. 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.

4.19 TRANSPARENCY

The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not confidential information. Notwithstanding any other term of this Agreement, the Local Authority hereby gives his consent for FSS to publish the Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Agreement, to the general public.