

SERVICE AGREEMENT

between

QUALITY MEAT SCOTLAND

and



2021



Provision of Assessment and Certification Services  
to the QMS Whole Chain Assurance Programme

**VERSION TO ACCOMPANY ITT - 27.9.21**

**MORTON FRASER**   
LAWYERS

1	Interpretation	1
2	Commencement and Term	5
3	Appointment	5
4	Provision of Services	5
5	Change	7
6	Employees	7
7	Claims by the Contractor's Employees	8
8	TUPE	8
9	The Contractor's Expenses	9
10	Joint Assessments	10
11	Review	10
12	Fees	10
13	Audit	11
14	Confidentiality	11
15	Corrupt gifts or payments	13
16	Intellectual Property	13
17	Limitation of Liability	14
18	Termination	14
19	Data Protection, Data Storage and Data Transfer	17
20	Official Secrets Act, Confidentiality, and Access to Government Information	20
21	Indemnity and insurance	20
22	Discrimination	21
23	Blacklisting	21
24	Force Majeure	21
25	Recovery of sums due	22
26	Entire Agreement	22
27	Waiver	22
28	Severability	22
29	Notices	22
30	Assignment and sub-contracting	23

31	Disclaimer of Agency and Partnership	23
32	Dispute Resolution	24
33	Variation	24
34	Governing Law	24
	PART 1 Contract Services	26
	PART 2 Reduction in Fees	32
	PART 3 Fees	33
	PART 4 Contract Targets	34
	PART 5 Development programme services	35
	Development Programme Targets	35

## SERVICE AGREEMENT

### Parties

- (1) **QUALITY MEAT SCOTLAND**, a non-departmental public body, established under the Quality Meat Scotland Order 2008 and having its principal place of business at Rural Centre, Ingliston, Newbridge, EH28 8NZ (**QMS**); and
- (2) ● (the **Contractor**).

### Background

- (A) QMS is the body responsible for assessing meat producers, handlers and carriers in Scotland and wishes to appoint a contractor to carry out certain of these functions.
- (B) After inviting tenders from interested parties, the Contractor submitted a tender and QMS has now selected the Contractor to operate the six (6) Scottish quality assurance schemes operated by it.
- (C) QMS and the Contractor have agreed that the Contractor shall provide the Services (as defined below) on the terms and conditions of this Agreement.

NOW THEREFORE IT IS AGREED as follows:-

### 1 Interpretation

1.1 In this Agreement, unless the context requires otherwise:-

**Agreement** means this agreement between QMS and the Contractor.

**Applicant** means any company, partnership (including a limited liability partnership) or individual who applies or who has applied to become a Member of any Scheme but who has not yet been accepted as a Member.

**Approved Quality Management System** means the Contractor's systems and operating procedures approved by UKAS or equivalent and as set out in the Tender Response and approved by QMS.

**Assessment** means any inspection of an Applicant's or a Member's land, premises or plant and equipment (as appropriate) for the purposes of assessing their compliance with the Scheme Standards and any other relevant Scheme Regulations and the terms **Assessments**, **Assesses** and **Assessed** shall be construed accordingly.

**Assessors** means the individuals employed or contracted by the Contractor to carry out the Assessments;

**Business Day** means any day on which the banks are open for business in Edinburgh.

**Certificate** means the document issued by the Contractor to an Applicant or a Member to confirm that an Applicant or Member has met the requirements of the Scheme Standards and Scheme Regulations.

**Change in Law** means the coming into effect on or after the Commencement Date of any Act of Parliament, Order in Council or Directive of a Competent Authority or an amendment to any Act of Parliament, Order in Council or Directive of a Competent Authority other than a commencement order or other similar Directive which brings into effect legislation enacted prior to the date of this Agreement.

**Commencement Date** means 1 April 2022 notwithstanding the date or dates of this Agreement.

**Communication System** means a CRM system including a database of Members (applicant and existing) recording all communications and updating the relevant assurance status of Members.

**Competent Authority** means any local or national agency, authority, department, inspectorate, minister, official or public or statutory person (whether autonomous or not) of the United Kingdom (or of its government) or of the European Communities.

**Contract Manager** means a senior manager or director within the Contractor who has responsibility for (i) this Agreement; and (ii) the provision of personnel in accordance with clause 5 (*Employees*), and who shall attend Reviews with QMS for and on behalf of the Contractor.

**Contract Review** means a biannual meeting between QMS and the Contractor at which the Contractor's performance of the Contract Services in the preceding Contract Year is reviewed.

**Contract Services** means those services, requirements and other obligations set out in Part 1 (*Contract Services*) of the Schedule.

**Contract Targets** means the targets set down in Part 4 (*Contract Targets*) of the Schedule for each Scheme and the Contract Services generally.

**Contract Year** means the period of twelve (12) months beginning on the Commencement Date or any anniversary thereof.

**CPI** means the Consumer Prices All Items Index as published by the Office for National Statistics or its successor.

**Database** means all records, documentation, electronic records and other information held by the Contractor relating to Members and Applicants of any Scheme together with all other information that would be required to enable any successor to the Contractor to operate all or any of the Schemes including all content generated by or through the Communication System, but excluding therefrom any generic information which is owned by the Contractor and is not required to operate all or any of the Schemes, all of the above to be in machine readable form and compatible with the systems, software and hardware operated by QMS at the relevant time.

**Data Controller, Data Processor, Data Subject and Data Subject Access Request** have the meanings given in the Data Protection Laws.

**Data Protection Laws** means any law, statute, subordinate legislation regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the GDPR.

**DEFRA** means the Department for Environment Food and Rural Affairs.

**Development Programme** means the programme of continuous development of QMS's whole chain assurance programmes including without limitation the identification of opportunities to grow Scheme membership which the Contractor will undertake, without limitation, the provision of the Development Programme Services.

**Development Programme Review** means a meeting between QMS and the Contractor at which the progress and implementation of the Development Programme

including, without limitation, the provision of the Development Programme Services, will be reviewed.

**Development Programme Services** means those services, requirements and other obligations set out in Section A of Part 5 (*Development Programme Services*) of the Schedule.

**Development Programme Targets** means the targets set out in respect of the Development Programme Services in Section C of Part 5 (*Development Programme Services*) of the Schedule.

**Directive** means any present or future directive, request, requirement, instruction, direction or rule of any Competent Authority (but only, if not having the force of law, it is reasonable in all the circumstances for it to be treated as though it had legal force) and includes any modification, extension or replacement thereof then in force.

**Fee** means the fee to be paid by QMS to the Contractor and as set out in Part 3 (*Fees*) of the Schedule, as amended from time to time in accordance with Part 2 (*Reduction in Fees*) and Section B of Part 5 (*Development Programme Services*) of the Schedule.

**GDPR** means UK GDPR as defined in section 3(10) (as supplemented by section 205(4) of the Data Protection Act 2018).

**Good Industry Practice** means standards, practices, methods and procedures conforming to legal and regulatory requirements and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as the Contractor under the same or similar circumstances.

**Governance System** means the system for the good governance of the Schemes and their operation including such the establishment (with appropriate terms of reference) of such committees as are necessary for the provision of technical and industry advice and assistance to all relevant persons on certification issues relevant to each Scheme as set out in the Tender Response.

**Intellectual Property Rights** means all copyright, patent, trademark, design right, database right and any other right in the nature of intellectual property whether or not registered, in any materials or works in whatever form (including but not limited to any materials stored in or made available by means of an information technology system and the computer software relating thereto) which are created, produced or developed as part of the Services by or on behalf of the Contractor;

**Member** means any company, partnership (including a limited liability partnership) or individual who is a member of a Scheme.

**Notifiable Diseases** means diseases affecting cattle, sheep or pigs which must be notified to a DEFRA Divisional Veterinary Manager or to a police constable.

**Personal Data** has the meaning given in the Data Protection Laws.

**PGI Scheme** means the UK GI and EU GI Protected Geographical Indication schemes as operated by DEFRA.

**Premises** means the location where the Services are to be performed.

**Processing** has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly.

**QMS Confidential Information** means all information acquired from any source by the Contractor whether designated confidential or not, relating to QMS, its projects,

its business, finances, dealings, transactions and affairs and all designs, drawings, plans, working papers, patent documents, data, methods, processes, techniques, operating procedures, technology and know-how, including all Intellectual Property, of any description relating to QMS (including, without limitation, any information relating to the Schemes, Members and/or Applicants stored on the Communication System) and its business but excluding any information relating to QMS which is in the public domain.

**QMS Standard Setting Bodies** means a competent group appointed by QMS to develop new Scheme Standards and Scheme Regulations to be applied by the Contractor and to review the existing Scheme Standards and Scheme Regulations applied by the Contractor in the provision of the Services.

**Relevant Accreditation** means United Kingdom Accreditation Service standard ISO/IEC 17065 or its equivalent;

**Scheme** means any one of the following six (6) quality assurance schemes established by QMS and operated by the Contractor on behalf of QMS:-

- Quality Meat Scotland Cattle and Sheep Assurance Scheme
- Quality Meat Scotland Pigs Assurance Scheme
- Quality Meat Scotland Haulage Assurance Scheme
- Quality Meat Scotland Auction Market and Collection Centre Assurance Scheme
- Quality Meat Scotland Feeds Assurance Scheme and
- Quality Meat Scotland Processor Assurance Scheme

**Scheme Committee** means any committee established pursuant to the Governance System.

**Scheme Documentation** means all publicly available documentation (including any online material and documents provided by electronic means) relating to any Scheme in the form, or similar to the form, of documentation produced during the period of 2008-2017, including Scheme Regulations, Scheme Standards and application forms, but excluding promotional material and advertisements.

**Scheme Fees** means any and all fees properly due and payable by the Members and/or Applicants of any Scheme collected by the Contractor for and on behalf of QMS in accordance with the terms of this Agreement.

**Scheme Manager/Coordinator** means an employee appointed to a Scheme by the Contractor to supervise the day-to-day running of that Scheme.

**Scheme Regulations** means the regulations of a Scheme as published by the Contractor and approved by QMS acting reasonably, as may be varied in writing from time to time.

**Scheme Standards** means the standards that are required to be met by Applicants and Members in order to receive a Certificate as the same may be agreed by QMS acting reasonably and published by the Contractor on behalf of QMS.

**Services** means the Contract Services and the Development Programme Services.

**Supervisory Authority** has the meaning given in the Data Protection Laws.

**Targets** means the Contract Targets or the Development Programme Targets.

**Tender Response** means the Contractor's response to QMS's Invitation to Tender for the provision of the Services.

**TUPE** means the Transfer of Undertakings (Protection of Employment) Regulations 2006/246 (as amended and updated from time to time).

1.2 In this Agreement:-

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 references to gender include references to all genders;
- 1.2.3 unless otherwise stated, references to sub-clauses, clauses and to the Schedule are to sub-clauses, clauses and the Schedule to this Agreement;
- 1.2.4 the clause headings are for reference only and shall not affect the construction or interpretation of this Agreement;
- 1.2.5 the Schedule of five parts is incorporated into and forms part of this Agreement;
- 1.2.6 references to statutes, any statutory instrument, regulation or order shall be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time; and
- 1.2.7 the words **include** or **including** are to be construed as meaning without limitation.

## 2 **Commencement and Term**

This Agreement shall commence on the Commencement Date and shall continue thereafter until 31 March 2027 unless earlier terminated in accordance with clause 18 (*Termination*).

## 3 **Appointment**

- 3.1 QMS hereby appoints the Contractor to provide the Services in accordance with the provisions of this Agreement.
- 3.2 Without prejudice to the right of QMS to publicly recognise as equivalent to the Scheme Standards the standards of any other equivalent quality assurance scheme, QMS agrees that it shall not appoint any other person to provide the Services while this Agreement subsists.

## 4 **Provision of Services**

- 4.1 During the existence of this Agreement the Contractor agrees to provide the Services to QMS in accordance with the provisions of this Agreement and the Tender Response.
- 4.2 The Contractor shall provide the Services in a proper, diligent, expeditious and professional manner.
- 4.3 The Contractor shall, at all times in performing the Services:-
  - 4.3.1 comply with all applicable law, any applicable requirements of regulatory bodies; and Good Industry Practice;



- 4.3.2 act in accordance with the Approved Quality Management System;
  - 4.3.3 act in the best interests of QMS;
  - 4.3.4 use its best endeavours to promote the interests of QMS; and
  - 4.3.5 perform the Services dutifully, timeously and in good faith.
- 4.4 The Contractor shall not carry out work on behalf of any third party where the interests of that third party conflict directly with the interests of QMS without the written approval of QMS, such approval not to be unreasonably withheld or delayed (and with reasons for refusal being given to the Contractor in writing within ten (10) Business Days of such request for approval by the Contractor being made). For the avoidance of doubt the Contractor shall not require the written approval of QMS in relation to any other work including work carried out in connection with the PGI Scheme provided always that any such work carried out by the Contractor shall not prejudice or compromise the Contractor's performance of the Services in any respect.
- 4.5 The Contractor shall procure that its employees and representatives, so far as reasonably practicable:-
- 4.5.1 make themselves available, at all reasonable times and upon reasonable notice, to QMS for the purposes of consultation and advice relating to the provision of the Services; and
  - 4.5.2 at the expense of the Contractor, attend meetings, including Contract Reviews, with representatives of QMS and such other parties as may be necessary for the performance of the Services.
- 4.6 The Contractor shall not in performing the Services hold itself out or permit any person to hold it out as being authorised to bind QMS in any way and will not do any act which might reasonably create the impression that it is so authorised.
- 4.7 The Contractor shall not:-
- 4.7.1 without the written approval of QMS, incur any liability on behalf of QMS, nor pledge the credit of QMS in any way nor make any legally binding representations, enter into any contracts or agreements or give any warranty on behalf of QMS; or
  - 4.7.2 engage in conduct which, in the reasonable opinion of QMS, is likely to bring QMS into disrepute.
- 4.8 The Contractor warrants and undertakes that:-
- 4.8.1 the Contractor has full capacity and authority and all necessary licences, permits and consents (including but not limited to, where its circumstances and procedures so require, the consent of its parent company) to enter into and to perform this Agreement, including full authorisation under the Relevant Accreditation;
  - 4.8.2 the provision of the Services shall not infringe any Intellectual Property Rights of any third party;
  - 4.8.3 the Services shall be performed in compliance with all applicable laws, enactments, orders, regulations, codes of practice and other similar instruments; and

4.8.4 as at the date hereof there is no material outstanding litigation, arbitration or other disputed matters to which the Contractor is a party which may have a material adverse effect upon the fulfilment of the Contractor's liabilities, responsibilities and obligations pursuant to this Agreement.

4.9 The Contractor undertakes that within thirty (30) days of termination of this Agreement for whatever reason it shall do all such acts necessary to transfer all Databases to QMS or to such other party as QMS directs, in accordance with sub -clause 19.17.

## 5 Change

5.1 QMS may order any variation to any part of the Services that for any other reason shall in QMS's opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Services and changes in quality, form, character, kind, timing, method or sequence of the Services

5.2 Save as otherwise provided herein, no variation of the Services as provided for in clause 5.1 hereof shall be valid unless given or confirmed in the form of an order given by QMS. All such orders shall be given in writing provided that if for any reason QMS shall find it necessary to give any such order orally in the first instance the Contractor shall comply with such oral order which must be confirmed in writing by QMS within 2 working days of the giving of such oral order by QMS, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.

5.3 Where any such variation of the Services made in accordance with clauses 5.1 and 5.2 has affected or may affect the costs incurred by the Contractor in providing the Services, the Contractor will notify QMS in writing of the effect which it has had or may have on the said costs and such notification shall be considered by QMS, who shall take all of the facts into account (including such information as may be provided by the Contractor in respect of the effect which such variation has had or may have on the costs incurred by the Contractor in providing the service) and may authorise such alteration to the sums to be paid to the Contractor in accordance with the provisions of this Agreement as are, in QMS's opinion, appropriate and reasonable in the circumstances

## 6 Employees

6.1 During the term of this Agreement, the Contractor shall:-

6.1.1 subject to sub-clause 6.1.3 notify QMS once every six (6) months of the personnel who will perform the Services, including the Contract Manager and all Scheme Managers/Scheme Coordinators;

6.1.2 provide such personnel as shall possess the appropriate experience, skills and qualifications necessary for the Services to be performed in accordance with this Agreement including sufficient qualified Assessors; and

6.1.3 not appoint the Contract Manager or any Scheme Manager/Scheme Coordinator without the prior written consent of QMS (which consent shall not be unreasonably withheld or delayed).

6.2 The Contractor shall ensure that no individual employed by them or otherwise engaged by them, in each case, in the performance of the Services has any other interests or any other assignments which may result in any material conflict of interest in relation to the performance of the Services. In the event that the Contractor identifies a potentially material conflict of interest, the Contractor shall immediately notify QMS in writing. The question of whether any such material conflict of interest arises and accordingly, whether the relevant individual can be involved in the

performance of the Services shall be a matter for decision by QMS, acting reasonably. If QMS determines that a material conflict of interest exists, then the Contractor undertakes that the relevant individual shall not be permitted to participate in the performance of the Services, and in the case of an employee, shall not have access to any information relating to the performance of the Services.

- 6.3 Where the Contractor employs staff or engages sub-contractors to provide the Services or any part thereof, the Contractor shall ensure that such staff and sub-contractors are taken bound by the provisions of this Agreement, in particular but not limited to those provisions relating to confidentiality, Intellectual Property Rights and conflict of interest.
- 6.4 QMS shall ensure that its employees and subcontractors are bound by the provisions of this Agreement in particular but not limited to those relating to confidentiality.

## 7 **Claims by the Contractor's Employees**

The Contractor shall indemnify and keep indemnified QMS against any costs, expenses, claims or liabilities in respect of QMS being deemed to be the employer of any individual who provides the Services and/or any claim by such an individual that he is so employed by QMS other than claims as a result of the operation of TUPE.

## 8 **TUPE**

- 8.1 The Contractor recognises that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**) may apply in respect of the Agreement, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall (a) transfer to the Contractor on the commencement of the Agreement; (b) transfer to another supplier on the expiry of the Agreement.
- 8.2 During the period of six months preceding the expiry of the Agreement or after QMS has given notice to terminate the Agreement or the Contractor stops trading, and within 20 working days of being so requested by QMS, the Contractor shall fully and accurately disclose to QMS or to any person nominated by QMS information relating to employees engaged in providing the Services in relation to the Agreement in particular, but not necessarily restricted to, the following:
  - 8.2.1 the total number of personnel whose employment with the Contractor is liable to be terminated at the expiry of this Agreement but for any operation of law; and
  - 8.2.2 for each person, age and gender, details of their salary, date of commencement of continuous employment and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of staff do not have to be given); and
  - 8.2.3 information about the other terms and conditions on which the affected staff are employed, or about where that information can be found; and
  - 8.2.4 details of pensions entitlements, if any.
- 8.3 The Contractor shall permit QMS to use the information for the purposes of TUPE and of re-tendering, which shall include such disclosure to potential suppliers as QMS considers appropriate in connection with any re-tendering. The Contractor will cooperate with the re-tendering of the contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.

- 8.4 The Contractor agrees to indemnify QMS fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision or disclosure of information permitted under this clause.
- 8.5 In the event that the information provided by the Contractor in accordance with this clause becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information originally given was inaccurate, the Contractor shall notify QMS of the inaccuracies and provide the amended information. The Contractor shall be liable for any increase in costs QMS may incur as a result of the inaccurate or late production of data.
- 8.6 The provisions of this clause 8 (*TUPE*) shall apply during the continuance of this Agreement and after its termination howsoever arising.

## 9 **The Contractor's Expenses**

In providing the Services the Contractor shall meet all foreseeable costs and expenses incurred by it or by any Assessor or Scheme Committee including:-

- 9.1 any travel expenses incurred by any Assessor be they an employee or contractor of the Contractor in carrying out the Services;
- 9.2 all recruitment and training costs for Assessors be they employees or contractors of the Contractor;
- 9.3 any Scheme Documentation produced;
- 9.4 the creation, maintenance and operation of the Communication System;
- 9.5 all costs incurred in obtaining and maintaining the Relevant Accreditation;
- 9.6 all postage and stationery costs incurred in relation to the secretarial support to be provided by the Contractor to any Scheme Committee as part of the Services; and
- 9.7 any reasonable costs in relation to Scheme Committees within the following parameters:-
- a maximum of six (6) meetings per Committee per annum;
  - all meetings shall take place in mainland Scotland;
  - meeting room and catering to be arranged and paid for by the Contractor;
  - attendees to claim mileage in line with HMRC guidance on mileage expenses and at a rate per meeting of 45p/mile or such other rate as may be laid down by HMRC from time to time;
  - all other travel and subsistence at the rates specified in the Tender Response to be agreed with the Contractor in advance in accordance with the Contractor's purchase order system;
  - no remuneration to be given for the time involvement of attendees; and
  - the foregoing arrangements in this sub-clause 9.7 (*The Contractor's Expenses*) apply only to Scheme Committee members appointed by the Contractor and exclude staff of QMS and any other attendees.

10 **Joint Assessments**

10.1 In performing the Services, the Contractor shall carry out joint Assessments with other quality assurance bodies, in terms of this clause 10.1, operating in Scotland, including but not limited to:-

**NOTE: To be conformed to Tender Response**

Farm Based Schemes	Food Processing Schemes

10.2 When carrying out the Contract Review, QMS shall be entitled to consider to what extent the Contractor has developed working relationships with other quality assurance bodies in providing the Services and what effect, if any, this has had on the costs and standard of the Services.

11 **Review**

11.1 QMS shall carry out a biannual Contract Review with the Contractor mid way through and at the end of each Contract Year. QMS may also at any time conduct an audit of the Contractor's performance. Any Contract Review or audit may be carried out by QMS or by such person as QMS shall appoint to carry out such Contract Review.

11.2 The Contractor and QMS will not less than every six (6) months meet to carry out a Development Programme Review.

11.3 Once QMS has completed a Contract Review or a Development Programme Review it shall, at either party's request, arrange a meeting with the Contractor to discuss its findings.

11.4 QMS shall be entitled to take into account the following when assessing the Contractor's performance in any Contract Review or Development Programme Review:-

11.4.1 the frequency (if at all) with which the Contractor fails to meet the Targets as set out by QMS from time to time;

11.4.2 the number of complaints (if any) received from Applicants or Members in relation to any Scheme;

11.4.3 the formation and/or success of any joint Assessments in terms of clause 10.1 above; and

11.4.4 any other relevant matters relating to the provision of the Contract Services or, where applicable, the Development Programme Services by the Contractor to QMS.

12 **Fees**

12.1 Subject to the Contractor performing the Services to the satisfaction of QMS and subject to any deductions provided for in Part 2 (*Reduction in Fees*) and Section B of Part 5 (*Development Programme Services*) of the Schedule, QMS will pay the Contractor the Fee, to be calculated in accordance with Part 3 (*Fees*) of the Schedule.

- 12.2 The Fee is payable by BACS monthly in arrears within thirty (30) calendar days of receipt by QMS of an invoice from the Contractor failing which interest shall be payable on any outstanding and undisputed element or any disputed element which is ultimately paid of the Fees at the rate 2% above the base rate from time to time of the Bank of Scotland plc.
- 12.3 Following QMS's decision regarding the amount of the Fee payable net of any deductions in accordance with Part 2 (*Reduction in Fees*) of the Schedule, or where QMS fails to notify the Contractor of its decision within 10 Business Days of receipt by QMS of the report(s) referred to in Part 2 (*Reduction in Fees*) of the Schedule, the Contractor shall render an invoice to QMS in respect of the Fee for the month to which the report relates and such invoice shall apply any deductions which are to be made to the Fee in accordance with Part 2 (*Reduction in Fees*) and Section B of Part 5 (*Development Programme Services*) of the Schedule.
- 12.4 The Contractor shall keep proper records and books of account showing the amount of all Fees and the basis upon which all Fees are earned. Such records and books shall be kept separate from any records and books not relating solely to the Service and be open on reasonable notice during normal business hours to inspection and audit by QMS (or its authorised representative), who shall be entitled to take copies of or extracts from them. If such inspection or audit should reveal a discrepancy in Fees paid from those payable under this Agreement, the Contractor shall immediately repay any excess and reimburse QMS in respect of any professional charges incurred for such audit or inspection. Such right of inspection of QMS shall remain in effect for a period of one year after the termination of this agreement.
- 12.5 Within 30 days of the end of each Contract Year, the Contractor shall submit to QMS a written statement certified by the Contractor of the amount of all Fees and the basis upon which all Fees were earned in that Contract Year. If such statement shows that the amount paid by QMS is less than the amount due in respect of that Contract Year, QMS shall pay to the Contractor within 14 days of agreement by QMS of the terms of the statement an amount equivalent to the difference between the amount paid and the amount due. If such statement shows that the amount paid by QMS is greater than the amount due, the Contractor shall repay QMS within 14 days of agreement by QMS of the terms of the statement an amount equivalent to the difference between the amount paid and the amount due.

### 13 **Audit**

- 13.1 The Contractor shall keep and maintain until 5 years after the Agreement has been completed records to the satisfaction of QMS of all expenditures which are reimbursable by QMS and of the hours worked and costs incurred in connection with any employees of the Contractor paid for by QMS on a time charge basis. The Contractor shall on request afford QMS or QMS's representatives such access to those records as may be required by QMS in connection with this Agreement.
- 13.2 The provisions of this clause 13 (*Audit*) shall apply during the continuance of this Agreement and after its termination howsoever arising.

### 14 **Confidentiality**

- 14.1 The Contractor shall at all times keep secret and confidential all information including QMS Confidential Information, and in particular, but without prejudice to the foregoing generality the Contractor shall:-
- 14.1.1 hold QMS Confidential Information secret and confidential on behalf of and for the exclusive benefit of QMS and shall not at any time, unless QMS otherwise decides, remove any tangible material relating to QMS Confidential Information from the offices of QMS or such other place or

places as QMS may from time to time decide as suitable for the storage or safe custody of them;

14.1.2 not use any QMS Confidential Information for any purpose other than delivery of the Services and not copy any QMS Confidential Information or divulge QMS Confidential Information to any third party save for employees, contractors and professional advisers except with the express written consent of QMS, such consent not to be unreasonably withheld or delayed. Any such permitted disclosures shall in no way affect the ownership of such QMS Confidential Information; and

14.1.3 on termination of this Agreement for any reason whatsoever (and notwithstanding any claim of whatever nature it may have against QMS) immediately cease use of and deliver to QMS all tangible materials relating to the QMS Confidential Information including all copies of all relevant documents whether in paper or electronic form in the possession of the Contractor save to the extent that the same shall be required for regulatory purposes or for the purpose of litigation and shall in addition, if so requested by QMS, disclose to and inform QMS to the fullest extent of all QMS Confidential Information of any description known to it in any way relating to or in connection with such matters and their current state and future proposals or development to enable the same to be continued or developed to their fullest extent.

14.2 QMS shall at all times keep confidential the Contractor Confidential Information and shall comply with the obligations of confidentiality contained in the Relevant Accreditation relating to the Contractor Confidential Information and, in particular, but without prejudice to the foregoing generality QMS shall:-

14.2.1 hold the Contractor Confidential Information secret and confidential on behalf of and for the exclusive benefit of the Contractor and shall not at any time, unless the Contractor otherwise decides, remove any tangible material relating to the Contractor Confidential Information from the offices of the Contractor;

14.2.2 not use, copy or divulge the Contractor Confidential Information to any third party except with the express written consent of the Contractor, such consent not to be unreasonably withheld or delayed, except insofar as any such information relates to and is required to be disclosed under any of the Schemes. Any such permitted disclosures shall in no way affect the ownership of such the Contractor Confidential Information; and

14.2.3 on termination of the Agreement for any reason whatsoever (and notwithstanding any claim of whatever nature it may have against the Contractor) immediately cease use of and deliver to the Contractor all tangible materials relating to the Contractor Confidential Information including all copies of all relevant documents whether in paper or electronic form in the possession of QMS and shall in addition, if so requested by the Contractor, disclose to and inform the Contractor to the fullest extent of all the Contractor Confidential Information of any description known to it in any way relating to or in connection with the Services and their current state and future proposals or development to enable the same to be continued or developed to their fullest extent.

14.3 Notwithstanding sub-clause 14.2, QMS may disclose information:-

14.3.1 relating to any Scheme at its discretion, provided that such disclosure is not likely, in the reasonable opinion of QMS, to be damaging to the commercial elements of the Contractor; and

14.3.2 under Freedom of Information legislation in accordance with the provisions of clause 20 (*Official Secrets etc.*).

## 15 **Corrupt gifts or payments**

The Contractor shall not offer or give, or agree to give, to any employee or representative of QMS any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with QMS or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. The attention of the Contractor is drawn to the criminal offences created by the Bribery Act 2010.

## 16 **Intellectual Property**

16.1 All Intellectual Property Rights in any material including but not limited to reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs which are created or developed by the Contractor on behalf of QMS for use, or intended use, in relation to the performance by the Contractor of its obligations under this Agreement are hereby assigned to and shall vest in QMS absolutely.

16.2 Except as may expressly be provided for in the Agreement or otherwise in any other agreement between QMS and the Contractor, neither party acquires any interest in or license to use the other party's Intellectual Property Rights owned or developed prior to or independently of this Agreement.

16.3 The Contractor must not infringe any Intellectual Property Rights of any third party in providing the Services or otherwise performing its obligations under this Agreement. The Contractor shall indemnify QMS against all actions, claims, demands, losses, charges, costs and expenses which QMS may suffer or incur as a result of or in connection with any breach of this clause 16.3.

16.4 The provisions of this clause 16 (*Intellectual Property*) shall apply during the continuance of this Agreement and after its termination howsoever arising.

16.5 The Contractor shall give written notice to QMS identifying all Intellectual Property Rights created by it solely for the purpose of the provision of the Services in terms of this Agreement during the period of the same where the same is to be the property of and vest in QMS immediately on creation of such Intellectual Property Rights.

16.6 During the period of this Agreement, and at all times thereafter the Contractor shall (and shall procure that all third parties, employees and individuals shall) execute and perform all such applications, assignments, documents and acts as may be required by QMS for the purpose of giving effect to sub-clause 16.1 and/or obtaining and enforcing any legal protection in respect of such Intellectual Property Rights and in such countries as QMS may, in its absolute discretion, determine.

16.7 The Contractor hereby irrevocably waives any moral rights it may have in terms of Chapter IV Part I of the Copyright, Designs and Patents Act 1988, in relation to the Intellectual Property Rights created by the Contractor solely for the purpose of the provision of the Services during the period of the same and any similar rights available in any part of the world and shall procure that its staff and any third parties and/or sub-contractors used in the performance of the Services shall similarly waive such moral rights.

16.8 Subject to the rights of any third party the Contractor will provide QMS or its duly authorised representatives, on demand, with copies of any documents, in whatever form, which come into existence in connection with or in the course of the performance of its obligations in terms of this Agreement.



## 17 Limitation of Liability

- 17.1 Neither party excludes or limits liability to the other party for death or personal injury arising from the breach of duty of such party.
- 17.2 The limitations contained in sub-clause 17.5 below shall not apply to the indemnities contained in clause 7 (*Claims by the Contractor's Employees*) and clause 21 (*Indemnity and Insurance*).
- 17.3 Subject always to sub-clause 17.1, the total liability of QMS to the Contractor for any and all breaches of this Agreement, or otherwise in relation to the subject matter of this Agreement (including that arising from negligence, delict, or otherwise) shall be limited to TWO HUNDRED AND FIFTY THOUSAND POUNDS (£250,000) STERLING.
- 17.4 Subject always to sub-clause 17.1, QMS shall not be liable to the Contractor in contract, delict (including negligence) or otherwise arising out of or in connection with this Agreement including by way of indemnity for:-
- 17.4.1 any economic loss (including loss of revenues, profits, contracts, business or anticipated savings; or
  - 17.4.2 any loss of goodwill or reputation; or
  - 17.4.3 any special, indirect or consequential losses or damage,
- in any case, whether or not such losses were within the contemplation of the parties at the date of this Agreement, suffered or incurred by that party arising out of or in connection with the provisions of any matter under this Agreement.
- 17.5 Subject always to sub-clauses 17.1 and 17.2, the Contractor shall not be liable to QMS in contract, delict (including negligence) or otherwise arising out of or in connection with this Agreement including by way of indemnity for:-
- 17.5.1 any economic loss (including loss of revenues, profits, contracts, business or anticipated savings;
  - 17.5.2 any loss of goodwill or reputation; or
  - 17.5.3 any special, indirect or consequential losses or damage,
- in any case, whether or not such losses were within the contemplation of the parties at the date of this Agreement, suffered or incurred by that party arising out of or in connection with the provisions of any matter under this Agreement.
- 17.6 The parties expressly agree that should any limitation or provision contained in this clause 17 (*Limitation of Liability*) be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party 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.

## 18 Termination

- 18.1 QMS shall have the right to terminate this Agreement on each of 31 March 2025 and 31 March 2026 on not less than 6 months' written notice served on the Contractor.
- 18.2 QMS shall have the right to terminate this Agreement without any liability to the Contractor on six (6) months' written notice following any Contract Review where QMS, acting reasonably, deems the performance of the Services by the Contractor in

that Contract Year to have been of an unsatisfactory standard, in accordance with clause 11 (*Review*).

- 18.3 The Contractor shall notify QMS in writing immediately upon the occurrence of any of the following events:
- 18.3.1 where the Contractor is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of the Contractor's estate or a criminal bankruptcy order is made against the Contractor, or the Contractor is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage the Contractor's affairs; or
  - 18.3.2 where the Contractor is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in 18.3.1 or 18.3.2 of this clause occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or
  - 18.3.3 where the Contractor is a company, if the company passes a resolution for winding-up of dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge or
  - 18.3.4 where there is any change of control (as defined in the Income and Corporation Taxes Act 1988) of the Contractor or any other material change in its management which QMS reasonably believes may adversely affect the provision of the Services or operation of the Schemes;
  - 18.3.5 where the Contractor enters into any arrangements with any third party which might prejudice the independence and impartiality of the Contractor in its provision of the Services; or
  - 18.3.6 where in QMS's reasonable opinion the Contractor is guilty of conduct tending to bring the Contractor or QMS into disrepute.
- 18.4 On the occurrence of any of the events described in clause 18.1 or, if the Contractor shall have committed a material breach of this Agreement and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by QMS in writing to do so or, where the Contractor is an individual if the Contractor shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003, QMS shall be entitled to terminate this Agreement by notice to the Contractor with immediate effect. Thereupon, without prejudice to any other of QMS's rights, QMS may complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Contractor) all materials, plant and equipment on the Premises belonging to the Contractor, and QMS shall not be liable to make any further payment to the Contractor until the Services have been completed in accordance with the requirements of the Agreement, and shall be entitled to deduct from any amount due to the Contractor the costs thereof incurred by QMS (including QMS's own costs). If the total cost to QMS exceeds the amount (if any) due to the Contractor, the difference shall be recoverable by QMS from the Contractor.

- 18.5 QMS may terminate the Agreement in the event that:
- 18.5.1 the Agreement has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;
  - 18.5.2 the Contractor has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or
  - 18.5.3 the Agreement should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

In this clause, the **Treaties** has the meaning given in the European Communities Act 1972.

- 18.6 QMS may also terminate the Agreement in the event of a failure by the Contractor to comply in the performance of the Services with legal obligations in the fields of environmental, social and employment law.
- 18.7 In addition to QMS's rights of termination under clause 18.1, 18.2, 18.4, 18.5 or 18.6, QMS shall be entitled to terminate this Agreement by giving to the Contractor not less than 30 days' notice to that effect.
- 18.8 Termination under clause 18.1, 18.2, 18.4, 18.5 or 18.6 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to QMS and shall not affect the continued operation of clauses 13 (*Audit*), 16 (*Intellectual Property*), 20 (*Official Secrets Acts, etc.*), 8rotec (*TUPE*) and 19 (*Data Protection*).
- 18.9 Upon any material breach by the Contractor of any of its duties and obligations under this Agreement, QMS shall have the right to seek an order for specific implement against the Contractor in addition to bringing a claim for damages. the Contractor hereby agrees that QMS shall in addition have the right to seek to recover any loss and damage suffered by it in respect of the Contractor's prior breach of its duties and obligations in connection with the provision of the Services;
- 18.10 Following any termination of this Agreement as a result of QMS or the Contractor's breach of this Agreement the party in breach shall indemnify the other against any reasonable costs incurred by the other party, including management and legal costs incurred or suffered by that party as a result of QMS or the Contractor's breach, provided that the amount of such indemnity shall be deducted from any damages due by the party in question.
- 18.11 In addition to, but without prejudice to the whole other rights and remedies of the parties under and in terms of this Agreement, the Contractor may terminate this Agreement by written notice to that effect served upon QMS, such termination having immediate effect from the date of that notice, in the event that QMS fails in any material respect to perform or comply with any of its obligations under this Agreement and where such failure is remediable it is not remedied to the reasonable satisfaction of the Contractor within twenty eight (28) days of notification to QMS of the occurrence thereof, and requiring the same to be remedied.
- 18.12 QMS shall be entitled to terminate this Agreement on giving the Contractor six (6) months written notice where in QMS's reasonable opinion there is a fundamental

change in the operation or effect of this Agreement between the parties resulting directly or indirectly by reason of a Change in Law or as a result of an equivalence of standards being granted to another certification body which may result in a reduction in the operational volumes of Members.

- 18.13 Termination of this Agreement in accordance with the terms of this clause 18 (*Termination*) shall be without prejudice to any rights of either party under the provisions of this Agreement existing at the date the Agreement is terminated (including the right of either party to recover all sums due to that party up to such date of termination).

## 19 Data Protection, Data Storage and Data Transfer

- 19.1 The Contractor acknowledges that any Personal Data described in the scope of the Schedule Part 1 (Data Protection) may be Processed in connection with the Services under this Agreement. For the purposes of any such Processing, Parties agree that the Contractor acts as the Data Processor and QMS acts as the Data Controller.
- 19.2 Both Parties agree to negotiate in good faith any such amendments to this Agreement that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this clause 19 (*Data Protection etc.*) are without prejudice to any obligations and duties imposed directly on the Contractor under Data Protection Laws and the Contractor hereby agrees to comply with those obligations and duties.
- 19.3 The Contractor will, in conjunction with QMS and in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with Data Protection Laws.
- 19.4 The Contractor will provide QMS with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 19.5 The Contractor must:-
- 19.5.1 process Personal Data only as necessary in accordance with obligations under the Agreement and any written instructions given by QMS (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Contractor is subject; in which case the Contractor must, unless prohibited by that law, inform QMS of that legal requirement before processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Contractor's obligations under this Agreement or as is required by the law;
  - 19.5.2 subject to clause 19.5.1 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with QMS's prior written consent;
  - 19.5.3 take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Contractor Personnel:
    - 19.5.3.1 are aware of and comply with the Contractor's duties under this clause;
    - 19.5.3.2 are subject to appropriate confidentiality undertakings with the Contractor or the relevant Sub-contractor;

- 19.5.3.3 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 QMS or as otherwise permitted by this Agreement; and
    - 19.5.3.4 have undergone adequate training in the use, care, protection and handling of Personal Data.
  - 19.5.4 implement appropriate technical and organisational measures in accordance with Article 32 of the GDP to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being 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.
- 19.6 The Contractor shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from QMS. In the case of general written authorisation, the Contractor must inform QMS of any intended changes concerning the addition or replacement of any other sub-contractor and give QMS an opportunity to object to such changes.
- 19.7 If the Contractor engages a sub-contractor for carrying out Processing activities on behalf of QMS, the Contractor must ensure that same data protection obligations as set out in this Agreement are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Contractor shall remain fully liable to QMS for the performance of the sub-contractor's performance of the obligations.
- 19.8 The Contractor must provide to QMS reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 1223 of the GDPR.
- 19.9 The Contractor must notify QMS if it:
  - 19.9.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 19.9.2 receives a request to rectify, block or erase any Personal Data;
  - 19.9.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
  - 19.9.4 receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Agreement; or
  - 19.9.5 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 regulatory order;
- and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with QMS from time to time.
- 19.10 Taking into account the nature of the Processing and the information available, the Contractor must assist QMS in complying with QMS's obligations concerning the

security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:

- 19.10.1 ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.
  - 19.10.2 notifying a Personal Data breach to QMS without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
  - 19.10.3 assisting QMS with communication of a personal data breach to a Data Subject;
  - 19.10.4 supporting QMS with preparation of a data protection impact assessment;
  - 19.10.5 supporting QMS with regard to prior consultation of the Supervisory Authority.
- 19.11 At the end of the provision of Services relating to processing the Contractor must, on written instruction of QMS, delete or return to QMS all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.
- 19.12 The Contractor must:-
- 19.12.1 provide such information as is necessary to enable QMS to satisfy itself of the Contractor's compliance with this clause 19 (*Data Protection etc.*);
  - 19.12.2 allow QMS, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this clause 19 (*Data Protection etc.*) and contribute as is reasonable to those audits and inspections;
  - 19.12.3 inform QMS, if in its opinion, an instruction from QMS infringes any obligation under the Data Protection Laws.
- 19.13 The Contractor must maintain written records of all Processing activities carried out in performance of the Services or otherwise on behalf of QMS. Such records must contain the information set out in Article 30(2) of the GDPR and may be kept in electronic form,
- 19.14 If requested, the Contractor must make such records referred to in clause 19.13 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
- 19.15 The Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under clause 19.14 with minimum disruption to the Contractor's day to day business.
- 19.16 The Contractor will at the request of QMS promptly provide to QMS such information and such access to its premises and access to the Database as QMS may require in order to ensure compliance with the provisions of this data protection clause.
- 19.17 On termination of this Agreement, for whatever reason, the Contractor shall within thirty (30) days, transfer all data held pursuant to this Agreement including, without

limitation, the Database to QMS and shall thereafter securely destroy any copies, duplicates or electronic version of all such data, and the Contractor shall no longer be a Data Processor for the purposes of this Agreement unless required to be retained for regulatory purposes or for the purpose of litigation.

## 20 **Official Secrets Act, Confidentiality, and Access to Government Information**

- 20.1 The Contractor undertakes to abide and procure that the Contractor's employees abide by the provisions of the Official Secrets Acts 1911 to 1989.
- 20.2 The Contractor shall keep secret and not disclose and shall procure that the Contractor's employees keep secret and do not disclose any information of a confidential nature obtained by the Contractor by reason of this Agreement except information which is in the public domain otherwise than by reason of a breach of this provision.
- 20.3 All information related to the Agreement will be treated as commercial in confidence by the parties except that:-
- 20.3.1 the Contractor may disclose any information as required by law or judicial order to be disclosed.
- 20.3.2 QMS may disclose any information as required by law or judicial order to be disclosed. Further, QMS may disclose all information obtained by QMS by virtue of the Agreement to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents. When disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that QMS shall if QMS sees fit disclose such information but is unable to impose any restrictions upon the information that QMS provides to Members of the Scottish Parliament, (MSPs) or Members of the United Kingdom Parliament (MPs). Such disclosure shall not be treated as a breach of this Agreement
- 20.4 The provisions of this clause 20 (*Official Secrets etc.*) shall apply during the continuance of this Agreement and after its termination howsoever arising.
- 20.5 The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the Freedom of Information (Scotland) Act 2002 (**FOISA**), the content of this Agreement is not confidential this Agreement in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the FOISA redacted) including any changes to the Agreement agreed from time to time

## 21 **Indemnity and insurance**

- 21.1 Without prejudice to any rights or remedies of QMS the Contractor shall indemnify QMS and the Crown against all actions, suits, claims, demands, losses, charges, costs and expenses which QMS 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 any negligent or wrongful act or omission of the Contractor.
- 21.2 QMS shall indemnify the Contractor in respect of all claims, proceedings, actions, damages, fines, costs, expenses or other liabilities which may arise out of, or in consequence of, a breach of the Data Protection Laws where the breach is the direct result of the Contractor acting in accordance with QMS's specific written instructions. This indemnity provision shall not apply if the Contractor-

- 21.2.1 acts on QMS's specific written instructions but fails to notify QMS in accordance with clause 19.12.3 of this Agreement;
- 21.2.2 fails to comply with any other obligation under the Agreement.
- 21.3 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Contractor (in respect of which the indemnity in clause 21.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of QMS, the Crown or any servant or agent of the Crown) the indemnity contained in clause 21.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of QMS, the Crown or any servant or agent of the Crown
- 21.4 The Contractor shall have in force and shall require any sub-Contractor to have in force:
  - 21.4.1 employer's liability insurance in the sum of £5,000,000,
  - 21.4.2 professional indemnity insurance in the sum of £5,000,000; and
  - 21.4.3 public liability insurance for such sum and range of cover as the Contractor deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under this Agreement in the sum of not less than £10,000,000 for any one incident and unlimited in total, unless otherwise agreed by QMS in writing.
- 21.5 The policy or policies of insurance referred to in clause 21.4 shall be shown to QMS whenever QMS requests, together with satisfactory evidence of payment of premiums, including the latest premium due thereunder.

## 22 **Discrimination**

The Contractor must not unlawfully discriminate against any person within the meaning of the Equality Act 2010 in its activities relating to the Agreement or any other contract with QMS.

## 23 **Blacklisting**

The Contractor must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle QMS to terminate the Agreement

## 24 **Force Majeure**

- 24.1 Any delay in or failure by either party hereto in performance hereunder in whole or in part shall be excused if and to the extent that such delay or failure is caused by occurrences beyond such party's control including but not limited to, Notifiable Diseases, acts of God, decrees or restraints of government, strikes, labour disputes, war, fire, riot, sabotage, terrorism, epidemic, pandemic or public health emergency and any other cause or causes whether similar or dissimilar to those already specified which cannot be controlled by such party (**Force Majeure**).
- 24.2 Performance of any obligation arising under this Agreement shall be so excused for the period during which such inability of the party to perform is so caused but for no longer period and shall be remedied as far as possible with all reasonable despatch. Any time period for performance shall be extended by a period equal in duration to any period during which such performance is excused by this clause 24 (*Force Majeure*).



24.3 Where the Contractor is unable to perform any part or whole of the Services owing to an event of Force Majeure QMS reserves the right to suspend payment of the Fee in respect of the relevant part or whole of the Services until the Contractor is able to resume the Services. Any modification to the Services to be provided by the Contractor to QMS or to the fees to be paid by QMS to the Contractor which arises in respect of any period of Force Majeure shall be at QMS's sole discretion. Failing the exercise of QMS's discretion no Fee shall be due by QMS to the Contractor in respect of the period of such suspension.

**25 Recovery of sums due**

Wherever under this Agreement any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under this Agreement or under any other agreement or contract with QMS or with any department, agency or authority of the Crown.

**26 Entire Agreement**

This Agreement together with the Tender Response and any other document referred to therein as forming part of the Contract constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any previous understandings, arrangements, representations, negotiations or agreements previously entered into between the parties. Provided that nothing in this clause 26 (*Entire Agreement*) shall have effect to exclude the liability of either party for fraud or fraudulent misrepresentation.

**27 Waiver**

Failure, delay or neglect by either party to enforce at any time any provision of this Agreement shall not be construed nor shall be deemed to be a waiver of that party's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice the party's rights to take subsequent action.

**28 Severability**

If any provision of this Agreement is declared to be void or unenforceable by any judicial or administrative authority in any jurisdiction in which this Agreement is effective, such provision will be deemed to be severable and the parties shall each use their reasonable endeavours in good faith to modify this Agreement so that the intent of this Agreement can be legally carried out.

**29 Notices**

29.1 Any notice given under or pursuant to this Agreement may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by email 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 in clause 29.2, or to such other address as the party may by notice to the other have substituted therefor, 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.

29.2 The email addresses for service of notice are:

29.2.1 QMS

Attn: Alan Clarke

Email: [aclarke@qmscotland.co.uk](mailto:aclarke@qmscotland.co.uk);

29.2.2 The Contractor

Attn: ●

Email: ●

### 30 Assignment and sub-contracting

- 30.1 The Contractor shall not assign or sub-contract any portion of the Agreement without the prior written consent of QMS. Sub-contracting any part of the Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Agreement.
- 30.2 Where QMS has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Contractor to QMS immediately it is issued.
- 30.3 Where the Contractor enters into a sub-contract must ensure that a provision is included which:-
- 30.3.1 requires payment to be made of all sums due by the Contractor to the subcontractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where QMS has made payment to the Contractor in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Contractor is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Contractor, payment must be made to the sub-contractor without deduction;
- 30.3.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of QMS and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to QMS; and
- 30.3.3 in the same terms as that set out in this clause 30.3 (including for the avoidance of doubt this clause 30.3.3) subject only to modification to refer to the correct designation of the equivalent party as the Contractor and subcontractor as the case may be.
- 30.4 The Contractor shall also include in every sub-contract:
- 30.4.1 a right for the Contractor to terminate that sub-contract if the relevant subcontractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Agreement, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in clause 18.3 occur; and
- 30.4.2 a requirement that the sub-contractor includes a provision having the same effect as clause 30.4.1 above in any sub-contract which it awards.

In this clause 30.4, **sub-contract** means a contract between two or more suppliers, at any stage of remoteness from QMS in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

### 31 Disclaimer of Agency and Partnership

- 31.1 This Agreement shall not, unless expressly agreed otherwise, constitute either party as an agent of the other save for collection of Scheme Fees by the Contractor on behalf of QMS. The parties hereto are independent contractors and shall have no power, nor will either of the parties represent that either has any power, to bind the other party or to assume or to create any obligation or responsibility, express or implied, on behalf of the other party or in the other party's name.
- 31.2 Nothing in this Agreement shall be construed as creating any relationship of partnership between the parties hereto in terms of the Partnership Act 1890 or any similar or analogous legislation in any jurisdiction to which either party is subject.

**32 Dispute Resolution**

- 32.1 The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with this Agreement.
- 32.2 Any dispute or difference arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination which cannot be resolved in good faith, shall be determined by the appointment of a single arbitrator to be agreed between the parties, and failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English
- 32.3 Any arbitration under 24.2 is subject to the Arbitration (Scotland) Act 2010.

**33 Variation**

This agreement shall not be amended and no variation to its terms shall be effective unless such amendment or variation is in writing and is signed by or on behalf of each of the parties.

**34 Governing Law**

This Agreement shall be governed by and construed in accordance with Scottish law and the Contractor hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of QMS to take proceedings against the Contractor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

IN WITNESS WHEREOF this Agreement comprising this and the previous 18 pages together with the Schedule of five parts annexed hereto, is executed in duplicate as follows:-

SUBSCRIBED for and on behalf of QUALITY MEAT SCOTLAND  
 by  
 at  
 on  
 in the presence of:-

.....  
 Authorised signatory

Witness .....

Full Name .....

Address .....

.....

SUBSCRIBED for and on behalf of ●

by

at

on

in the presence of:-

.....  
Authorised signatory

Witness .....

Full Name .....

Address .....

.....

This is the Schedule of five Parts referred to in the foregoing Service Agreement between Quality Meat Scotland and ●

## **SCHEDULE**

### **PART 1**

#### **Contract Services**

The Contractor shall provide the following services (the **Contract Services**) to QMS in terms of this Agreement:-

- 1 The Contractor shall deal with the registration and processing of Applicants and with the management of existing Members including without limitation:-
  - 1.1 handling application enquiries;
  - 1.2 distributing application packs;
  - 1.3 processing applications/re-applications (application forms and payment);
  - 1.4 ensuring membership information is accurately entered into the Communication System, particularly CPH numbers;
  - 1.5 conducting new Applicant pre-entry checks;
  - 1.6 handling receipt of fees and allocation to Members' accounts all in accordance with 5 below;
  - 1.7 ensuring no Applicant is assessed until payment has been cleared;
  - 1.8 scheduling new Applicant Assessments within 4 weeks of receipt of application;
  - 1.9 issuing renewal notices;
  - 1.10 issuing renewals receipts;
  - 1.11 maintaining and updating the Communication System with up to date scheme members information (applicant and existing) and current assurance status (Applicant, Approved Member or Withdrawn Member); and
  - 1.12 preparing and submitting daily membership data files to relevant FTP sites, to allow updating of QMS website and assurance traceability checker systems (please note this applies to both the registration and certification processes).
- 2 The Contractor shall carry out Scheme Assessments and administration of the Schemes at the frequency and within the procedures as specified by QMS from time to time including without limitation:-
  - 2.1 organising and operating a cost effective and consistent Assessment delivery model;
  - 2.2 providing consistent Assessment protocols for Applicants and existing renewing Members, the latter category being assessed in order to retain their ongoing approved assured status;
  - 2.3 ensuring rotation of Assessment schedules with no more than three consecutive Assessments carried out by the same Assessor;
  - 2.4 ensuring Assessments are scheduled according to the required frequencies;

- 2.5 ensuring there is always a sufficient number of Assessors, who are appropriately located, to allow Assessment schedules to be met;
  - 2.6 delivering Assessor training as required, in particular following the reviews of Scheme Standards;
  - 2.7 ensuring Assessors are positively engaged and Assessor details regularly sent to QMS to allow them to be updated about QMS activities
  - 2.8 monitoring individual Assessor performance through a programme which delivers witnessed Assessments and review of Assessor reports, with remedial action taken as appropriate;
  - 2.9 ensuring timely submission of Assessment reports for review and certification;
  - 2.10 managing cancellations and revisits;
  - 2.11 ensuring relevant paperwork is left with Members at the end of every Assessment;
  - 2.12 ensuring Members are fully aware of any non-compliances raised and the timescales for submitting corrective action;
  - 2.13 in respect of the QMS Cattle & Sheep Scheme, ensuring intervals between Assessments varies to allow Members' businesses to be seen at different times of the year;
  - 2.14 scheduling revisits after the routine Assessment as and when required, to verify corrective action for non-compliances, or to ensure that Scheme Standards are being maintained;
  - 2.15 maintaining and updating the Communication System with accurate Assessment information and update Members' current assurance status
  - 2.16 preparing and submitting daily membership data files to relevant FTP sites.
- 3 The Contractor shall manage the certification of Members being the decision making process which finally approves new Applicants and existing Members including without limitation:-
- 3.1 receiving and conducting a two stage review of Assessment reports, including a time scheduling system for this activity;
  - 3.2 issuing non-compliance letters detailing the required corrective action and timescales for submitting corrective action;
  - 3.3 issuing a timed schedule of reminder letters if corrective action is not received;
  - 3.4 receiving and reviewing corrective action evidence;
  - 3.5 communicating timeously with Members regarding non-compliance evidence and corrective action;
  - 3.6 approving compliant Members and issuing of certificates of conformity;
  - 3.7 communicating membership status changes timeously to QMS assurance scheme members - Applicant, Approved Member, not Approved/Suspended and Withdrawn; and

3.8 maintaining and updating the Communication System with certification results and status of all QMS assurance scheme members, to ensure relevant data feeds are up to date and accurate.

4 The Contractor shall, at its own cost, ensure that QMS has access to, and the ability to use freely, for its own purposes, the Database and all other information required by QMS and held by the Contractor relating to the Schemes and shall take all steps reasonably required by QMS to integrate its information systems into the information systems of QMS such that QMS may access and use at all times by means of its own system the following information:-

4.1 membership details including:-

4.1.1 Membership contacts details;

4.1.2 CPH numbers;

4.1.3 Status;

4.1.4 Stock figures/ vehicle information;

4.1.5 Correspondence details; and

4.1.6 Last assessed date/audit history

4.2 Relevant reports, being:-

4.2.1 KPI reports;

4.2.2 Spot checks;

4.2.3 ScottishSPCA joint visits;

4.2.4 Overdue reports; and

4.3 Membership mailing lists.

Without prejudice to the foregoing the Contractor will on request (within a maximum of five (5) Business Days of request), compile for QMS information to be held in its database relating to its administration of each Scheme and including:-

4.4 the number of Scheme Applicants and Members;

4.5 Scheme Fees paid during the current Year;

4.6 any trends in Assessment which become apparent, including the average period between the annual Assessment for each Member and the average time taken for each Assessment;

4.7 geographical distribution of Applicants and Members; and

4.8 other reasonable industry or marketing related data,

4.9 Assessments against Contract Targets;

4.10 changes in membership of each Scheme; and

4.11 financial summaries.

- 5 The Contractor shall arrange for the invoicing and collection of all Members' and Applicants' fees (**Scheme Fees**) and shall thereafter remit all Scheme Fees collected to QMS within fourteen (14) days of receipt by the Contractor. This shall include provision for members to pay by debit/credit card and online. The Contractor shall thereafter issue appropriately receipted VAT invoices to those Members and Applicants.
- 6 The Contractor shall at its own cost ensure that sufficient quantities of the Scheme Documentation are printed to ensure the proper administration of the Schemes. The parties shall co-operate as necessary in connection with the content and production of the Scheme Documentation and QMS shall use reasonable endeavours to ensure that all relevant information is delivered to the Contractor in relation to the Scheme Documentation.
- 7 The Contractor shall ensure that any relevant Scheme Documentation is despatched to any of the Scheme Members or Applicants as soon as reasonably practicable following a request therefor.
- 8 The Contractor will establish, and throughout the Term maintain, the Governance System in a form acceptable to QMS, properly operating, managing and conducting the Governance System at all times.
- 9 The Contractor shall, at all times, maintain established Scheme Standards under the guidance and control of the relevant Scheme Committee(s) and assist QMS Standard Setting Bodies (by as a minimum providing an advisor to attend each meeting of the QMS Standard Setting Bodies) in their development and/or improvement of Scheme Standards.
- 10 The Contractor shall provide secretarial services to the Scheme Committees in respect of all matters relating to all Schemes' operation. Secretarial services shall include preparing agenda, writing minutes and preparing written reports on Scheme operation. These services shall not include the preparation of reports relating to significant and strategic new developments (namely any activity other than that undertaken under this Agreement) which shall be discussed and negotiated between QMS and the Contractor as separate agreements from time to time.
- 11 The Contractor shall establish and manage an Assessor Consultation Group to provide a proactive mechanism which facilitates constructive feedback and discussion with Assessors across all Schemes. The group will meet quarterly with QMS.
- 12 The Contractor shall ensure that a dedicated telephone number with an adequate number of telephone lines to enable the proper performance by the Contractor of its obligations under this Agreement is reserved for enquiries from the Scheme Members or Applicants and that such telephone lines shall be manned by persons suitably conversant with all Schemes on every Business Day between the hours of 8am and 5pm.
- 13 The Contractor shall maintain a comprehensive and up to date directory of all Schemes' Members and Applicants.
- 14 The Contractor will co-operate with any applicable government department, directorate or division and Scot EID/ the British Cattle Movement System in relation to cross-referencing the contents and format of the Contractor database of Members and Applicants.
- 15 The Contractor shall appoint one Contract Manager with at least five years' relevant experience in agriculture and food production who shall be available as and when required by QMS to discuss matters relating to the Scheme and this Agreement.
- 16 The Contractor shall appoint a Scheme Manager/Scheme Coordinator for each Scheme. For the avoidance of doubt the Contractor shall be entitled to appoint the same person as Scheme Manager/Coordinator for more than one Scheme. The Scheme Manager/Coordinator must be in place for the Term unless otherwise agreed by QMS



- 17 The Contractor shall provide reasonable notice to QMS of the identity of any changes to any of the Contract Mangers or Scheme Managers/Coordinators before their appointment. QMS reserves the right to veto the proposed appointments upon reasonable grounds.
- 18 The Contractor shall employ and train such numbers of employees or consultants as shall enable it to properly manage the Schemes and otherwise to comply with its obligations under this Agreement. Any Assessors or other authorised persons carrying out Assessments under any of the Schemes shall not less than five years' experience of the sector in which they are engaged or a closely related business and ideally formal agricultural qualifications. QMS will not be liable to the Contractor for any claims made by any Assessor in respect of the termination of that Assessor's appointment.
- 19 The Contractor shall ensure that all of its staff and any agents or consultants involved in any of the Schemes shall be trained to an appropriate standard (including any necessary ongoing training and regular continual assessment of their skills and suitability) including, without limitation, ensuring that all Assessors receive all necessary introductory training in connection with their role covering as a minimum the Scheme Standards, related legislation, codes of practice, assessing skills, an overview of animal welfare assessment and food safety issues.
- 20 The Contractor shall train a minimum of four (4) Assessors to be available to respond to spot check requests or complaints from any source within forty-eight hours (48) for the QMS Cattle and Sheep, Pigs, Haulage, Auction Market and Collection Centres and Processor Assurance Schemes.
- 21 The Contractor shall deal with all membership enquiries for all Schemes.
- 22 The Contractor shall allocate Assessments, manage Assessors, receive and record incoming Assessment reports and shall make certification decisions (in liaison with the appropriate Scheme Committees), write to inform Applicants and Members of their membership status and issue membership Certificates.
- 23 The Contractor shall deal with appeals according to procedures set out in the Scheme Regulations.
- 24 The Contractor shall ensure that there is in place an appropriate system for independent review of the content of the Contractor's annual tracking of the Services and will, on request, provide to QMS the results of such review.
- 25 The Contractor shall provide membership information to authorised businesses, as appropriate to each Scheme for the purposes of product traceability, with the written consent of QMS. This will include ensuring correct operation of the feed of information into the SPECC checker, QMS website, QMS PGI Checker and the ZNCP Salmonella scheme. Notification of changes to membership status will be made to processors and auction markets on a daily basis.
- 26 The Contractor shall, as soon as is reasonably practicable, notify QMS of any matter which should be brought to QMS's immediate attention including, without limitation, any matter which is or may be likely to adversely affect QMS and/or any of the Schemes in any way and/or details of any dispute between the Contractor and any Applicant and/or Member.
- 27 The Contractor shall ensure in connection with this Agreement that it complies fully with the Data Protection Act 2018 together with any other statutes regulations or other legislation relating to the storage of data which may be in force from time to time.
- 28 The Contractor shall ensure that its administrative responsibilities include responding to enquiries about the status of any Applicant or Member against the production of a membership number by any person who the Contractor has reasonable cause to believe to be entitled to receive such information.
- 29 The Contractor shall provide the Services within the framework and requirements of the Relevant Accreditation. The Contractor will advise QMS on the Relevant Accreditation's

requirements and shall maintain Accredited status under the Relevant Accreditation for QMS Cattle and Sheep Assurance , QMS – Pigs Assurance , QMS Auction Market and Collection Centre Assurance , QMS Haulage Assurance and QMS Processor Assurance, dependent on QMS continuing agreement to be subject to the Relevant Accreditation's requirements, as interpreted and implemented by UKAS.

- 30 The Contractor acknowledges that any change to the requirements of the current QMS certification system (e.g. significant alterations to the Standards, Rules, extended assessment time, increased administration requirements or as a result of a Change in Law) will result in a revised Fee being notified by the Contractor to QMS for approval, which approval shall not be unreasonably withheld or delayed.
- 31 The Contractor shall ensure that an annual Assessment carried out in accordance with Scheme Standards for each Member in relation to the QMS Cattle and Sheep Assurance Scheme is conducted in each twelve month period commencing on 1 April and ending on 31 March in the following year.
- 32 The Contractor shall ensure that an annual Assessment carried out in accordance with Scheme Standards for each Member in relation to the QMS Pig Assurance Scheme is conducted at such frequency as is established by the risk based system set out by QMS from time to time, where appropriate jointly with an SSPCA inspector.
- 33 The Contractor shall ensure that an annual Assessment carried out in accordance with Scheme Standards for each Member in relation to the QMS Haulage Assurance Scheme is conducted once in each twelve month period commencing on 1 April in one year and ending on 31 March that year.
- 34 The Contractor shall ensure that an annual Assessment carried out in accordance with Scheme Standards for each Member in relation to the QMS Auction Market and Collection Centre Assurance Scheme is conducted once in each twelve month period commencing on 1 April in one year and ending on 31 March in that year.
- 35 The Contractor shall ensure that members of the QMS Processor Assurance scheme receive three (3) assessments within each Contract Year, with the exception of seasonal facilities (one each year) and BRC certified sites (two each year).
- 36 The Contractor shall in relation to the QMS Feeds Scheme (a) verify that Members are currently UFAS or equivalent scheme approved; (b) collect the annual renewal fee; and (c) provide up to date membership lists to all QMS livestock Assessors.
- 37 The Contractor shall ensure that joint activities between the Scottish Society for Prevention of Cruelty to Animals (SSPCA) and the QMS Assurance schemes are carried out in full. These activities will be agreed between SSPCA, QMS and the Contractor at the start of each Contract Year.
- 38 The Contractor shall ensure that it agrees a number of spot checks to be carried out as part of the Spot Check Programme for each Scheme and that such spot checks are then carried out.
- 39 The Contractor shall provide QMS with prior written notice of their involvement in any and all activities related to the areas covered by the QMS standards.
- 40 The Contractor shall maintain and operate the Communication System.

**PART 2**  
**Reduction in Fees**

- 1 Where a monthly report provided to QMS by the Contractor in terms of paragraph 2 of Part 1 (*Contract Services*) of the Schedule indicates that the Contractor has failed to meet one or more of the relevant Contract Targets in respect of the month to which the report relates and where the Contractor can, in QMS's reasonable opinion, offer no satisfactory justification for such failure then QMS shall at its discretion be entitled, subject to paragraph 2 of this Part 2 (*Reduction in Fees*) of the Schedule below, to deduct from the Fee payable to the Contractor for the relevant month the corresponding amount relating to the failure to meet the relevant Contract Targets such amount being deemed to be a reasonable estimate of any or all of the time, inconvenience, effort and/or expense caused to QMS in this regard. If the amount of the deduction exceeds the Fee payable to the Contractor for the relevant month, the excess shall be carried over and applied to subsequent monthly Fees until the deduction has been applied in its entirety.
  
- 2 QMS shall only be entitled to exercise its rights under this Part 2 (*Reduction in Fees*) of the Schedule where its decision to do so is communicated in writing to the Contractor within ten (10) Business Days of receipt by QMS of the relevant report(s).

### **PART 3**

#### **Fees**

QMS shall pay to the Contractor the following fees (the **Fees**), plus Value Added Tax at the prevailing rate and such Fees may be increased on each anniversary of the Commencement Date in respect of the Contract Year commencing on that anniversary by such amount as the Contractor and QMS shall agree being not more than the percentage annual change in CPI in the calendar year ended immediately prior to that anniversary as derived from the table of "*CPI All Items: percentage change over 12 months*" published by the ONS:-

**Note: To be conformed to the Pricing Schedule**

**PART 4**  
**Contract Targets**

- 1 The Contractor shall meet the targets, including but not limited to those targets set out below (the **Contract Targets**), in relation to the monthly Assessments carried out relating to each appropriate Scheme during each Contract Year as may be amended or updated in writing by QMS and agreed by the Contractor from time to time.
- 2 The Contractor shall be entitled to request a review of any of the Contract Targets set by QMS pursuant to this Schedule in which event QMS shall review such Target or Targets where the Contractor submits a written request for such a review within ten (10) Business Days of receipt of such a written request.
- 3 The Contractor shall not be entitled to dispute the same Target on more than one occasion.

TARGETS:

SCHEMES:

1. Quality Meat Scotland Cattle and Sheep Assurance (QMS C&S Assurance)
2. Quality Meat Scotland Pigs Assurance (QMS Pigs Assurance)
3. Quality Meat Scotland Haulage Assurance (QMS Haulage Assurance)
4. Quality Meat Scotland Auction Market and Collection Centre Assurance (QMS AM & CC Assurance)
5. Quality Meat Scotland Feed Assurance (QMS Feed Assurance)
6. Quality Meat Scotland Processor Assurance (QMS PA)

**Note: KPIs and consequence of failing to meet KPIs (Reduction in Fees) to be conformed to Tender Response**

**PART 5**  
**DEVELOPMENT PROGRAMME SERVICES**

**SECTION A**

**Development Programme Services**

**Note: To be conformed to Tender responses**

**SECTION B**

**Reduction in Fees**

Where, following a Development Programme Review, QMS has decided that the Contractor has failed to meet one or more of the Development Programme Targets in respect of the period to which the Development Programme Review relates and where the Contractor can, in QMS's reasonable opinion, offer no satisfactory justification for such failure then QMS shall at its discretion be entitled, subject to paragraph 2 of this Part 5 (*Development Programme Services*) of the Schedule, to deduct from any future Fee(s) a sum which represents a reasonable estimate of any or all of the time, inconvenience, effort and/or expense caused to QMS by the Contractor's failure. The parties shall act in good faith when deciding which Fee(s) the deduction should be made against.

**SECTION C**

**Development Programme Targets**

**Note: To be conformed to Tender responses**