

1. Interpretation

1.1 In these terms and conditions, the following definitions apply.

‘Agreement’ means the contract between the Customer with any Co-funders and the Contractor for the supply of Deliverables in accordance with these terms and conditions and the Order.

‘Biological Materials’ means any material collected or produced through the Agreement that is:

- of biological origin and contains genetic information capable of reproduction
- derived from material of biological origin that contains genetic information capable of reproduction

This includes, without limitation, plants, animals, microbes or viruses.

‘Central Government Body’ means a body listed in one of the following sub-categories of the central government classification of the [public sector classification guide](#), as published and amended from time to time by the Office for National Statistics:

- government department
- non-departmental public body or assembly sponsored public body (advisory, executive or tribunal)
- non-ministerial department
- executive agency

‘Charges’ means the charges for the Deliverables as specified in the Order.

‘Co-funder’ means a co-funder of the Charges named in the Order (if any).

‘Confidential Information’ means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party that is:

- known by the receiving Party to be confidential
- marked as or stated to be confidential
- ought reasonably to be considered by the receiving Party to be confidential

This excludes information that:

- the recipient Party already had without obligation of confidentiality before it was disclosed by the disclosing Party
- was given to the recipient Party by a third party without obligation of confidentiality
- was in the public domain at the time of the disclosure

- was independently developed without access to the disclosing Party's Confidential Information

'Contractor' means the person named as Contractor in the Order.

'Conventions' means any and all of:

- the Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture, including any Protocols and other additions or amendments from time to time
- any guidelines adopted by the parties to the same (including, without limitation, the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization)
- any national legal or regulatory requirements made in pursuance of the provisions of the same in any territory

'Customer' means the person identified as such in the Order.

'Date of Delivery' means that date by which the Goods must be Delivered to the Customer and any Co-funder, as specified in the Order.

'Defra Group' means the Department for Environment, Food and Rural Affairs and its arm's length bodies, non-departmental public bodies and agencies. This includes (without limitation):

- the Environment Agency
- the Rural Payments Agency
- Natural England
- the Animal and Plant Health Agency
- the Marine Management Organisation

'Deliver' means hand over the Goods to the Customer and any Co-funder at the address and on the date specified in the Order, which shall include unloading and any other specific arrangements agreed in accordance with clause 4. Delivered and Delivery shall be construed accordingly.

'Deliverables' means the Goods or Services (or both) as set out in the Order to be delivered by the Contractor under the Agreement (and includes any Results).

'EIR' means the Environmental Information Regulations 2004.

'EU GDPR' means the General Data Protection Regulation (Regulation (EU) 2016/679).

'Existing IPR' means any and all intellectual property rights that are owned by or licensed to any Party and which have been developed independently of the Agreement (whether prior to the date of the Agreement or otherwise).

‘Expiry Date’ means the end date for provision of the Services and the date on which the Agreement will expire as set out in the Order.

‘Final Report’ has the meaning given in clause 23.4.

‘FOIA’ means the Freedom of Information Act 2000 together with any guidance and codes of practice issued by the UK Information Commissioner or relevant Government department in relation to such legislation.

‘Force Majeure Event’ means any event, circumstance, matter or cause affecting the performance by any Party of their respective obligations arising from:

- acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Party seeking to claim relief in respect of a Force Majeure Event (the ‘Affected Party’) which prevent or materially delay the Affected Party from performing its obligations under the Agreement
- riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare
- acts of a Crown Body, local government or regulatory bodies
- fire, flood or any disaster
- an industrial dispute affecting a third party for which a substitute third party is not reasonably available

This excludes:

- any industrial dispute relating to the Contractor, the Staff (including any subsets of them) or any other failure in the Contractor or the subcontractor’s supply chain
- any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned
- any failure of delay caused by a lack of funds

This must not be attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party.

‘Goods’ means any and all goods (or any part of them) to be supplied by the Contractor to the Customer and any Co-funders under the Agreement.

‘Income’ means any revenues received by the Contractor, irrespective of whether such payment is in money or other consideration, arising from the use or exploitation of the Results or any part of the Results. This includes, without limitation, the sale or disposal of products or services, royalties, payments for licences or options and stage payments.

‘Insolvency Event’ means in respect of a person:

- if that person is insolvent
- where that person is a company, limited liability partnership or a partnership, if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction)
- if an administrator or administrative receiver is appointed in respect of the whole or any part of the person's assets or business
- if the person makes any composition with its creditors
- if the person takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction

'Key Biological Materials' means Biological Materials held by or on behalf of the Contractor that are agreed by the Contractor, the Customer and (if relevant) the appropriate independent scientific advisory body (in each case acting reasonably) to be of national or international importance.

'Key Personnel' means any persons specified as such in the Order or otherwise notified as such by the Customer to the Contractor in writing.

'Know-How' means all information not in the public domain held in any form. This includes, without limitation, information comprised in or derived from: drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods.

'Law' means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Contractor is bound to comply.

'Losses' means all actions, suits, claims, demands, losses, damages, costs or expenses (including professional fees).

'New IPR' means any and all intellectual property rights in any materials created or developed by or on behalf of the Contractor pursuant to the Agreement including the Results but shall not include the Contractor's Existing IPR.

'Open Licence' has the meaning given in clause 10.12.6.

'Order' means the Customer's order for the supply of Goods or Services (or both), to which these terms and conditions are attached.

'Party' the Contractor, the Customer or any individual Co-funder (as appropriate).
'Parties' means the Contractor, the Customer and any individual Co-funder.

‘Project Year’ means each period of 12 months during the term of the Agreement beginning with the Start Date.

‘Purchase Order Number’ means the Customer’s unique number relating to the order for Deliverables to be supplied by the Contractor to the Customer in accordance with the terms of the Agreement.

‘Rectification Plan’ means the Contractor’s plan (or revised plan) to rectify its material default, which shall include:

- full details of the material default that has occurred, including a root cause analysis
- the actual or anticipated effect of the material default
- the steps which the Contractor proposes to take to rectify the material default (if applicable) and to prevent such material default from recurring, including timescales for such steps and for the rectification of the material default (where applicable)

‘Results’ means anything which is:

- prepared by or for the Contractor for use in relation to the performance of its obligations under the Agreement
- the result of any work done by the Contractor or the Staff in relation to the provision of the Services

This may include any guidance, specifications, reports (both published and unpublished), studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, maps, photographs, tapes, experimental results, analysis of results, inventions, computer programmes or designs.

‘Request for Information’ has the meaning set out in the FOIA or the EIR as relevant (where the meaning set out for the term ‘request’ shall apply).

‘Services’ means any and all services to be supplied by the Contractor to the Customer and any Co-funders under the Agreement.

‘Specification’ means the specification for the Deliverables to be supplied by the Contractor to the Customer and any Co-funders (including as to quantity, description, quality and any applicable codes of practice) as specified in the Order.

‘Staff’ means all directors, officers, employees, students, agents, consultants and contractors of the Contractor and of any sub-contractor of the Contractor engaged in the performance of the Contractor’s obligations under the Agreement.

‘Staff Vetting Procedures’ means vetting procedures that accord with good industry practice or, where applicable, the Customer’s procedures for the vetting of personnel as provided to the Contractor from time to time.

‘Start Date’ means the start date of the Agreement set out in the Order.

‘Third Party IPR’ means intellectual property rights owned by a third party which is or will be used by the Contractor for the purpose of providing the Deliverables.

‘UK GDPR’ has the meaning as set out in section 3(10) of the Data Protection Act 2018, supplemented by section 205(4).

‘VAT’ means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

‘Warranty Period’ means the period specified in the Order.

‘Working Day’ means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

- references to numbered clauses are references to the relevant clause in these terms and conditions
- any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done
- the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement
- any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment
- the word ‘including’ shall be understood as meaning ‘including without limitation’
- if there are no Co-funders, references to the Co-funders shall have no meaning or effect

2. Basis of agreement

2.1 These terms and conditions apply to the Agreement to the exclusion of any other terms that the Contractor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 All of these terms and conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

2.3 In consideration of the Customer’s and any Co-funder’s agreement to pay the Charges, the Contractor shall supply the Deliverables to the Customer, other members

of the Defra Group and any Co-funders subject to and in accordance with the terms and conditions of the Agreement.

2.4 In supplying the Deliverables, the Contractor shall co-operate with the Customer in all matters relating to the supply of Deliverables and comply with all the Customer's instructions.

3. Supply of goods

3.1 The Contractor shall supply the Goods in accordance with the Specification. The Contractor warrants, represents, undertakes and guarantees that the Goods supplied under the Agreement shall:

- be free from defects (manifest or latent), in materials and workmanship and remain so for the duration of the Warranty Period
- be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods
- conform with the specifications (including the Specification), drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Contractor) supplied by, or on behalf of, the Contractor
- be free from design defects
- be fit for any purpose held out by the Contractor or made known to the Contractor by the Customer expressly or by implication, and in this respect the Customer relies on the Contractor's skill and judgement

The Contractor acknowledges and agrees that the approval by the Customer of any designs provided by the Contractor shall not relieve the Contractor of any of its obligations under this sub-clause; and the Contractor itself shall comply with all applicable laws.

3.2 The Customer may inspect and test the Goods at any time before Delivery. The Contractor shall remain fully responsible for the Goods despite any such inspection or testing. Any such inspection or testing shall not reduce or otherwise affect the Contractor's obligations under the Agreement.

3.3 If following such inspection or testing the Customer considers that the Goods do not comply or are unlikely to comply with the Contractor's undertakings at clause 3.1, the Customer shall inform the Contractor and the Contractor shall immediately take such remedial action as is necessary to ensure compliance.

3.4 The Customer may conduct further inspections and tests after the Contractor has carried out its remedial actions.

3.5 All manufacturer warranties covering the Goods must be assignable to the Customer and any Co-funders on request and for free.

3.6 The Contractor must provide all tools, information and instructions the Customer and any Co-funders need to make use of the Goods.

3.7 The Contractor will notify the Customer and any Co-funders of any request that Goods are returned to it or the manufacturer after the discovery of safety issues or defects that might endanger health or hinder performance. The Contractor shall indemnify the Customer and any Co-funders against the costs arising as a result of any such request.

4. Cancellation, delivery and guarantee of title

4.1 The Customer shall have the right to cancel the order for the Goods, or any part of the Goods, which have not yet been Delivered to the Customer. The cancellation shall be made in writing. Without prejudice to the generality of the foregoing, the Customer shall pay:

- such Charges or that part of the Charges for Goods which have been Delivered to the Customer or, on the deemed date of service of the notice of cancellation, are already in transit
- the costs of materials which the Contractor has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials for a refund

The Contractor shall be required to take all reasonable steps to minimise these costs. For the avoidance of doubt the Customer shall not be liable for any loss of anticipated profits or any consequential loss.

4.2 The Contractor shall Deliver the Goods to the Customer on the Date of Delivery. Unless otherwise agreed in writing by the Customer, Delivery shall be on the date and to the address specified in the Order. Delivery of the Goods shall be completed once the completion of unloading the Goods from the transporting vehicle at the Delivery address has taken place and the Customer has signed for the Delivery.

4.3 The Contractor shall indemnify and hold harmless the Customer, any Co-funders and the Crown in respect of any Losses which the Customer, any Co-Funders or the Crown may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Contractor or any of its sub-contractors.

4.4 Delivery of the Goods shall be accompanied by a delivery note which shows the Purchase Order Number and the type and quantity of the Goods and, in the case of part Delivery, the outstanding balance remaining to be Delivered.

4.5 Unless otherwise stipulated by the Customer in the Order, Deliveries shall only be accepted by the Customer on Working Days and during normal business hours.

4.6 Where the Contractor fails to Deliver the Goods (or part of the Goods) or the Goods (or part of the Goods) do not comply with the provisions of clause 3, then without limiting any of its other rights or remedies implied by statute or common law, the Customer shall be entitled to:

- terminate the Agreement
- request the Contractor, free of charge, to deliver substitute Goods within the timescales specified by the Customer
- require the Contractor, free of charge, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid)
- reject the Goods (in whole or part) and return them to the Contractor at the Contractor's own risk and expense and the Customer shall be entitled to a full refund on those Goods or part of Goods duly returned
- buy the same or similar Goods from another supplier and to recover any expenses incurred in respect of buying the goods from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs

4.7 Without prejudice to any other rights or remedies of the Customer, title and risk in the Goods shall pass to the Customer when Delivery of the Goods is complete (including off-loading and stacking) but risk in the Goods remains with the Contractor if the Customer notices damage following Delivery and lets the Contractor know within 3 Working Days of Delivery.

4.8 The Contractor warrants that:

- it has full clear and unencumbered title to all the Goods
- at the date of Delivery of any of the Goods it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to the Customer – on Delivery the Customer shall acquire a valid and unencumbered title to the Goods

5. Supply of services

5.1 In respect of Services, the Agreement shall take effect on the date specified in the Order and shall expire on the Expiry Date, unless it is otherwise extended in

accordance with clause 5.2 or terminated in accordance with the terms and conditions of the Agreement.

5.2 The Customer may extend the Agreement for a period of up to the amount of time stated in Section 11 (Extension) of the Order by giving not less than 10 Working Days' notice in writing to the Contractor prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period. The Charges previously agreed by the Parties may be revised if necessary to accommodate the additional extension of the Agreement.

5.3 In supplying the Services, the Contractor shall meet the following requirements:

5.3.1 Perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Contractor's industry, profession or trade.

5.3.2 Use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with the Agreement.

5.3.3 Ensure that the Services shall conform with all descriptions and specifications set out in the Specification.

5.3.4 Comply with all applicable laws.

5.3.5 Provide all equipment, tools and vehicles and other items as are required to provide the Services.

5.3.6 Comply with its own policies, processes and internal quality control measures as long as they don't conflict with the Agreement.

5.3.7 Take all reasonable care to ensure performance does not disrupt the Customer's and any Co-funder's operations, employees or other contractors.

5.4 Late delivery of the Services shall be a default of the Agreement.

5.5 The Contractor will deliver Services to the other members of the Defra Group from time to time as directed by the Customer.

5.6 In this Agreement, unless the context requires otherwise or where expressly stated otherwise:

- references to the Customer receiving the Services will include, to the extent that they are receiving the Services, the other members of the Defra Group
- references to the Customer's following details will include, to the extent that they are receiving the Services, those of the other members of the Defra Group:
 - assets, equipment, data, systems, premises, operations and the like

- suppliers, contractors, advisors and other similar third parties
- references to the Customer providing or receiving an item (including data or information) pursuant to this Agreement will include items provided by or to the other members of the Defra Group
- for the purposes of the following clauses, references to the Customer shall be construed as references to the Customer or the other members of the Defra Group (or both) as the context requires: 6, 8, 10.12.5, 13.2, 14, 15.1, 15.2, 18.6.2, 18.13, 19.2.5, 20.4.2, 25.6, 25.11 and 27.1
- other references to the Customer will include the other members of the Defra Group where such reference relates to a right of the Customer which the other members of the Defra Group also require the benefit of in order to receive equivalent benefit in relation to the Services

6. Premises and equipment

6.1 If necessary, the Customer shall provide the Contractor with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer's premises by the Contractor or the Staff shall be at the Contractor's risk.

6.2 If the Contractor supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Contractor shall vacate the Customer's premises, remove the Contractor's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Contractor shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Contractor or any Staff, other than fair wear and tear.

6.3 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Contractor shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.

6.4 Without prejudice to clause 5.3.5, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Contractor and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.

6.5 The Contractor shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Contractor or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Contractor or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

7. Charges and payment

7.1 The Charges for the Deliverables shall be as set out in the Order and shall be the full and exclusive remuneration of the Contractor in respect of the supply of the Deliverables. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the supply of the Deliverables, including but not limited to the costs of packaging, insurance, delivery, unloading, stacking and carriage.

7.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Contractor a sum equal to the VAT chargeable in respect of the Deliverables.

7.3 In respect of the Goods, the Contractor shall invoice the Customer after Delivery as specified in the Agreement. In respect of Services, the Contractor shall invoice the Customer on completion of the Services as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Deliverables supplied in the invoice period.

7.4 In consideration of the supply of the Deliverables by the Contractor, the Customer shall pay the Contractor the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.

7.5 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Contractor shall not suspend the supply of the Deliverables. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 21.

7.6 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

7.7 Where the Contractor enters into a sub-contract, the Contractor shall include in that sub-contract:

- provisions having the same effects as clauses 7.3 to 7.6 of this Agreement
- a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effects as clauses 7.3 to 7.6 of this Agreement

7.8 The Contractor must ensure that all sub-contractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice.

7.9 In this clause 7, 'sub-contract' means a contract between 2 or more suppliers, at any stage of remoteness from the Customer 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.

7.10 If any sum of money is recoverable from or payable by the Contractor under the Agreement (including any sum which the Contractor is liable to pay to the Customer, any member of the Defra Group or any Co-funders in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Contractor under the Agreement or under any other agreement or contract with the Customer. The Contractor shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

7.11 Without prejudice to clause 18.2.10, the Customer and any Co-funders may withhold any Charges in the event the Contractor:

- fails to meet any agreed milestones within the number of days of the agreed milestone delivery date (as set out in Section 8 (Milestone Delays) of the Order)
- repeatedly fails over a period of 3 consecutive months to satisfy agreed milestones by their agreed milestone delivery dates as set out in the Specification

8. Staff and key personnel

8.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Contractor:

- refuse admission to any relevant person to the Customer's premises
- require that the Contractor replace any relevant person with another suitably qualified person

The Contractor shall comply with any such notice.

8.2 The Contractor shall:

- ensure that all Staff are appropriately trained and qualified (or in the case of students, supervised) and are vetted in accordance with the Staff Vetting Procedures and if requested, comply with the Customer's Staff Vetting Procedures as supplied from time to time
- if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement – if such information is requested the provisions of clause 15 shall apply

- procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer
- if requested, replace any person whose acts or omissions have caused the Contractor to breach clause 20

8.3 The Contractor indemnifies the Customer and any Co-funders against all claims brought by any person employed or engaged by the Contractor caused by an act or omission of the Contractor or any Staff.

8.4 The Contractor shall ensure that no person who discloses that they have a conviction that is relevant to the nature of the Agreement, relevant to the work of the Customer, or is of a type otherwise advised by the Customer (each such conviction a “Relevant Conviction”), or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check, a disclosure and barring service check or otherwise) is employed or engaged in the provision of the Goods and Services (or both).

8.5 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

8.6 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

9. Assignment, sub-contracting and supply chain

9.1 The Contractor shall not without the prior written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit or the burden (or both) of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

9.2 Where the Contractor enters into a sub-contract (including with any company associated with the Contractor), the Contractor shall include in that sub-contract provisions having the same effects as clauses 7.4 to 7.6 of this Agreement.

9.3 If the Customer asks the Contractor for details about sub-contractors, the Contractor shall provide adequate details of all such sub-contractors at all levels of the supply chain as reasonably requested by the Customer.

9.4 The Contractor must exercise due skill and care when it selects and appoints sub-contractors.

9.5 The Contractor will ensure that all sub-contracts in the Contractor's supply chain entered into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement contain provisions that place on the sub-contractors obligations that are no less onerous than the obligations that the Contractor is subject to pursuant to this Agreement.

9.6 At the Customer's request, the Contractor must terminate the use of any sub-contractors for the purpose of performing or contributing to the performance of the whole or any part of this Agreement in any of the following events:

- the acts or omissions of the sub-contractor have caused or materially contributed to a right of termination under clause 18
- a sub-contractor or its company group embarrasses or brings into disrepute or diminishes the public trust in the Customer
- the sub-contractor fails to comply with its obligations in respect of environmental, social, equality or employment Law

9.7 The Customer can assign, novate or transfer its Agreement or any part of it to any Crown Body, public or private sector body which performs the functions of the Customer. When the Customer uses its rights under this clause the Contractor must enter into a novation agreement in the form that the Customer specifies.

10. Intellectual property and indemnity

10.1 Each Party keeps ownership of its own Existing IPRs.

10.2 The Contractor gives the Customer, each member of the Defra Group and any Co-funders a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-license the Contractor's Existing IPR to enable the Customer, each member of the Defra Group, any Co-funders and each of their sub-licensees to both:

- receive and use the Deliverables
- use the New IPR

10.3 Where Option A is selected in the Order, any New IPR created under the Agreement is owned by the Customer. The Customer and any Co-funders each give the Contractor a licence to use any Existing IPRs and (in the case of the Customer only) the New IPR which the Contractor reasonably requires for:

- the purpose of fulfilling its obligations during the term of this Agreement

- using or exploiting the New IPR developed under the Agreement (subject to compliance with clause 11)

Where Option B is selected in the Order, any New IPR created under the Agreement is owned by the Customer. The Customer and any Co-funders each give the Contractor a licence to use any Existing IPRs and (in the case of the Customer only) the New IPR which the Contractor reasonably requires for the purpose of fulfilling its obligations during the term of the Agreement.

Where Option C is selected in the Order, any New IPR created under the Agreement is owned by the Contractor. The Customer and any Co-funders each give the Contractor a licence to use any Existing IPRs which the Contractor reasonably requires for the purpose of fulfilling its obligations during the term of the Agreement.

10.4 The Customer and any Co-funders each grant to each other a royalty-free, non-exclusive, non-transferable, worldwide licence to use its Existing IPRs for the purposes of receiving the benefit of the Services (including using the New IPRs) or for the exercise of rights under this Agreement.

10.5 Where a Party acquires ownership of intellectual property rights incorrectly under this Agreement it must do everything reasonably necessary to complete a transfer assigning them in writing to the appropriate Party on request and at its own cost.

10.6 No Party has the right to use any other Party's intellectual property rights, including any use of another Party's names, logos or trademarks, except as provided in this clause 10 or otherwise agreed in writing.

10.7 If any claim is made against the Customer, another member of the Defra Group or any Co-funder for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Deliverables (an 'IPR Claim'), then the Contractor indemnifies the Customer, each member of the Defra Group and any Co-funders against all Losses incurred as a result of the IPR Claim.

10.8 If an IPR Claim is made or anticipated the Contractor must at its own expense and the Customer's sole option, either.

- obtain for the Customer, each member of the Defra Group and any Co-funders (as the context requires) the rights in clauses 10.2 and 10.3 without infringing any third party intellectual property rights
- replace or modify the relevant item with substitutes that do not infringe intellectual property rights without adversely affecting the functionality or performance of the Deliverables

10.9 The Contractor shall not use in the delivery of the Deliverables any Third Party IPR unless it has notified the Customer that the owner or an authorised licensor of the relevant Third Party IPR will grant a direct licence to the Customer, each member of the Defra Group and any Co-funders for the Third Party IPR and that licence has been granted. The Customer, in its absolute discretion, shall have 10

Working Days following the Contractor's notification to reject the grant of the licence. If the Contractor cannot obtain for the Customer, each member of the Defra Group and any Co-funders a licence in respect of any Third Party IPR, for whatever reason, the Contractor shall:

- notify the Customer in writing
- use the relevant Third Party IPR only if the Customer has provided authorisation in writing, with reference to the acts authorised and the specific intellectual property rights involved

10.10 In spite of any other provisions of the Agreement and for the avoidance of doubt, award of this Agreement by the Customer and the ordering of any Deliverables under it does not constitute an authorisation by the Crown under sections 55 and 56 of the Patents Act 1977, section 12 of the Registered Designs Act 1949 or sections 240 to 243 of the Copyright, Designs and Patents Act 1988.

10.11 Where Option A or Option B is selected in the Order and there are one or more Co-funders that are party to this Agreement, the Customer grants to each Co-funder a royalty-free, non-exclusive, non-transferable licence to use the New IPRs.

10.12 Where Option B is selected in the Order, the following clauses (10.12.1 to 10.12.6) shall apply:

10.12.1 Subject to clause 10.12.3, the Contractor agrees that the Customer may at its sole discretion publish under Open Licence all or part of the New IPR and the Contractor warrants that the New IPR is suitable for release under Open Licence.

10.12.2 The Contractor will supply any or all New IPR in a format suitable for publication under Open Licence ('the Open Licence Publication Material') within 30 days of written request from the Customer ('Customer Open Licence Request').

10.12.3 The Contractor may within 15 days of a Customer Open Licence Request under clause 10.12.2 request in writing that the Customer excludes all or part of either of the following from Open Licence publication:

- the New IPR
- Contractor Existing IPR or Third Party IPR that would otherwise be included in the Open Licence Publication Material supplied to the Customer pursuant to clause 10.12.2

10.12.4 Any decision to approve any such request from the Contractor pursuant to clause 10.12.3 shall be at the Customer's sole discretion, not to be unreasonably withheld, delayed or conditioned.

10.12.5 Subject to clause 16, neither the Customer nor any Co-funders will be liable in the event that any Contractor Existing IPR or Third Party IPR is included in the Open Licence Publication Material published by the Customer.

10.12.6 For the purpose of this clause 10.12 'Open Licence' means any material that is published for use, with rights to access and modify, by any person for free, under a generally recognised open licence including [Open Government Licence](#) and the [Open Standards Principles](#) documented on GOV.UK.

10.13 Where Option C is selected in the Order, the Contractor hereby grants the Customer, each member of the Defra Group and any Co-funders a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-license any New IPR which is reasonably required by the Customer, any member of the Defra Group or any Co-funder to enable it to use and receive the Deliverables or for any purpose relating to the exercise of its (or, if the Customer, relevant Defra Group Member or Co-funder is a Public Sector Body, any other Public Sector Body's) business or function. For the purposes of this clause 10.13 'Public Sector Body' means a formally established organisation that is (at least in part) publicly funded to deliver a public or government service.

10.14 For all options, the Contractor shall:

- ensure that its Staff are and will be engaged in relation to the Agreement and the Services on terms which do not entitle any of them to any rights in the Results
- ensure that the Contractor is and remains entitled to transfer, free from any encumbrances, any title or rights (or both) necessary to effect the vesting of intellectual property rights required by the Agreement.
- identify and inform the Customer of any Results which it considers suitable for commercial exploitation

11. Commercial exploitation

11.1 This clause 11 shall only apply if it has been selected in Section 23 (Commercial Exploitation) of the Order.

11.2 Subject to clauses 11.3 and 11.4, the Contractor will use reasonable endeavours to exploit the Results commercially for its benefit and the benefit of the Customer and any Co-funders for the period stated in Section 23a (Commercial Exploitation) of the Order.

11.3 If the Contractor has identified an opportunity for the commercial exploitation of the Results and wishes to do so, then it shall either:

- apply to the Customer for a licence (with a right to sub-license as required) as may be necessary
- provide such assistance as may be required by the Customer to facilitate a licence being granted by the Customer to a third party

11.4 The Contractor shall identify and inform the Customer of any Results which may be suitable for registration as a patent, copyright, registered design, trade mark or other legal protection and shall:

- use its reasonable endeavours to apply for such protection throughout or in any part of the world in the name of the Customer
- maintain such protection in such part of the world as it considers suitable at its own expense

11.5 Subject to clause 11.6, the Income from the commercial exploitation of the Results shall, after deduction of allowable costs as described below, be apportioned between the Parties as follows:

- the Customer and any Co-Funders: the percentage specified in Section 23b(i) of the Order, to be divided in the proportion of the actual payments made to the Contractor under the Agreement by the Customer and any Co-Funders respectively
- the Contractor: the percentage specified in Section 23b(ii) of the Order

11.6 The Income referred to in clause 11.5 shall be payable for the time period selected in Section 23c of the Order.

11.7 The allowable costs for the purposes of clause 11.5 shall be limited to:

- the registration fees for the registering of any rights in relation to such Results
- any legal costs reasonably incurred in relation to legal proceedings in relation to such Results in any appropriate forum and before any appropriate tribunal in any country, and any costs ordered by any such tribunal to be paid by the Parties or any of them
- any other reasonable cost or expenditure which may be agreed from time to time by the Customer and the Contractor
- subject to written approval by the Customer, any reasonable marketing, packaging or distribution costs (or all 3 costs), and any relevant experimental development costs, including costs of field trials or demonstration projects (or both) incurred at the Contractor's expense

11.8 The Contractor shall have sole responsibility for making any payments due to Staff under any rewards or incentive schemes, whether contractual, ex gratia or statutory, in relation to the Results. Any such payments shall not be a cost or expenditure liable to be subtracted from any Income pursuant to clause 11.5.

11.9 Any payments in respect of a share of Income to be made to the Customer or any Co-funders (or both) by the Contractor shall be made promptly, in such format as the Customer may direct and accompanied by sufficient information to enable the Customer to identify:

- the agreement to which such payments relate

- the means (including a full breakdown of allowable costs) by which such payments have been calculated

11.10 If the Contractor does not intend to protect or exploit any Results then the Customer shall be entitled to obtain protection at its own cost. The Contractor will not be entitled to any share of the Income generated as a result of the protection or exploitation of the relevant Results obtained by the Customer.

11.10.1 For the avoidance of doubt, clauses 11.5 to 11.10 do not apply to and do not affect any intellectual property rights in existence before the commencement of the Services.

12. Governance, records and reporting

12.1 The Contractor shall:

- attend progress meetings with the Customer and any Co-funders at the frequency and times specified by the Customer (acting reasonably) and shall ensure that its representatives are suitably qualified to attend such meetings
- submit progress reports to the Customer and (if requested by the Customer) any Co-funders at the times and in the format specified by the Customer in clause 23
- appoint a project manager (who shall be classed as Key Personnel) to deal with day-to-day governance, project oversight, attend progress meetings and review reports – the name of the Contractor's project manager shall be stated in Section 21 (Key Personnel of the Contractor) of the Order

12.2 The Contractor shall keep and maintain until 7 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement, including the Deliverables supplied under it, and all payments made by the Customer. The Contractor shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

12.3 The Contractor must allow any auditor appointed by the Customer or any Co-funders (or both) access to its premises to verify all contract accounts and records of everything to do with the Agreement and provide copies for the audit. During an audit, the Contractor must provide information to the auditor and reasonable cooperation at their request. The Parties will bear their own costs when an audit is undertaken unless the audit identifies a material default by the Contractor, in which case the Contractor will repay the reasonable costs of the Customer or any Co-funder (or both) in connection with the audit.

12.4 If the Contractor is not providing any of the Deliverables, or is unable to provide them (or becomes aware of a material default), it must immediately:

- tell the Customer and any Co-funder(s) and give reasons;
- propose corrective action, including (if requested by the Customer) providing a Rectification Plan in respect of such corrective actions, alongside any additional documentation that the Customer requires
- provide a deadline for completing the corrective action, and once agreed, perform such corrective action in accordance with that deadline and any Rectification Plan (if one was requested)

12.5 If the Customer, acting reasonably, is concerned as to the financial stability of the Contractor such that it may impact on the continued performance of the Agreement then the Customer may require that the Contractor provide to the Customer (for its approval) a plan setting out how the Contractor will ensure continued performance of the Agreement and the Contractor will make changes to such plan as reasonably required by the Customer and once it is agreed then the Contractor shall act in accordance with such plan and report to the Customer on demand.

13. Confidentiality, transparency and publicity

13.1 Subject to clause 13.2, each Party shall:

- treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party
- not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement
- immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information

13.2 Notwithstanding clause 13.1, a Party may disclose Confidential Information which it receives from another Party:

- where disclosure is required by applicable law or by a court of competent jurisdiction
- to its auditors or for the purposes of regulatory requirements
- on a confidential basis, to its professional advisers
- to the Serious Fraud Office where the Party has reasonable grounds to believe that another Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010
- where the receiving Party is the Contractor, to the Staff on a need to know basis to enable performance of the Contractor's obligations under the Agreement provided that the Contractor shall procure that any Staff to whom it discloses Confidential Information pursuant to this subclause shall observe the Contractor's confidentiality obligations under the Agreement

- where the receiving Party is the Customer:
 - on a confidential basis to the employees, agents, consultants and contractors of the Customer
 - on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business
 - to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions
 - in accordance with clauses 7.8 and 14

For the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 13.

13.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA or the EIR (or both), the content of the Agreement is not Confidential Information and the Contractor and any Co-funders hereby gives their consent for the Customer to publish the Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA or the EIR (or both) redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Contractor or any Co-funders (or both) to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA or the EIR (or both).

13.4 The Contractor and any Co-funder(s) shall not, and the Contractor shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

13.5 Notwithstanding clause 13.4 and subject to clauses 13.1 to 13.3, the Contractor and any Co-funders shall not use, disclose or permit any person or organisation to use or disclose the Results for any thesis, degree, research or other educational purpose or make the Results generally available (including in scientific journals where reasonably appropriate) without the prior written agreement of the Customer. Any agreed publication shall acknowledge the financial support of the Customer and any Co-funders, including in any public statement. The Contractor or any Co-funders (or both) shall send details of any proposed publication to the Customer at least 30 days prior to the proposed publication and shall notify the Customer immediately if approached by the media about the Services or Results (or both). Any approved publication by the Contractor or any Co-funders (or both) shall be entirely at the cost of the Contractor or Co-funder (or both). The Contractor or Co-funder (or both) shall, within 10 days of publication, supply the Customer free of charge with a reasonable number of copies of any publication.

13.6 Subject to clauses 13.1 to 13.3 the Customer may disclose, copy and otherwise distribute to the public or use in any way any information arising out of the Services or comprised in any work relating to the Services. This includes but is not limited to the Results and any work or information derived from the Results.

13.7 Nothing in the Agreement shall permit or require the Contractor or any Co-funders to make any disclosure of information which would jeopardise any commercial exploitation of the Results.

14. Freedom of information

14.1 Each Party acknowledges that the Customer is subject to the requirements of the FOIA and the EIR and shall:

- provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the EIR
- transfer to the Customer all Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt
- provide the Customer with a copy of all information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such information
- not respond directly to a Request for Information unless authorised in writing to do so by the Customer

14.2 Each Party acknowledges that the Customer may be required under the FOIA and the EIR to disclose information concerning the Contractor, any Co-funders or the Deliverables (including commercially sensitive information) without consulting or obtaining consent from the other Parties. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA or EIR (or both), take reasonable steps, where appropriate, to give the other Parties advance notice, or failing that, to draw the disclosure to the other Parties' attention after any such disclosure.

14.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any information relating to the Contractor, any Co-funders or the Deliverables is exempt from disclosure in accordance with the FOIA or the EIR (or both).

14.4 To the extent that any Co-funder is a public sector body subject to the requirements of the FOIA or the Environmental Information Regulations 2004 (or

both), then the provisions of clauses 14.1 to 14.3 shall also apply as if references in those clauses to 'the Customer' were references to that Co-funder.

15. Protection and security of data

15.1 When handling Customer or any Co-funder data (or both), the Contractor shall ensure the security of the data is maintained in line with the security requirements of the Customer or Co-funder in question as notified to the Contractor from time to time.

15.2 The Contractor shall duly observe all its obligations under the Data Protection Legislation and shall provide all necessary assistance and cooperation as reasonably requested by the Customer to comply with its obligations under Data Protection Legislation which arise in connection with this Agreement.

15.3 Unless stated otherwise in Appendix 4 of the Order, the Parties acknowledge and agree that in connection with this Agreement neither Party will act as a Processor of the other (Processor having the meaning given to it in the UK GDPR). In the event that there is any change which requires either Party to act as a Processor the Parties agree, at their own cost, to enter into the standard data protection clauses set out in the Crown Commercial Services Procurement Policy Note 03/22 (as amended or replaced from time to time).

15.3.1 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may, on not less than 30 Working Days' notice to the Contractor and any Co-funders, amend this Agreement to ensure that it complies with Data Protection Legislation and any guidance issued by the Information Commissioner's Office. The Contractor or any Co-funders (or both) will, at their own cost, implement any measures required for them to comply with requirements or recommendations of guidance issued by the Information Commissioner's Office and with the terms of this Agreement.

15.3.2 Where the Customer has selected the further data protection provisions option in Section 26 (Further Data Protection Provisions) of the Order, the provisions of Annex 1 shall apply.

16. Liability

16.1 No Party shall be responsible for any injury, loss, damage, cost or expense suffered by another Party if and to the extent that it is caused by the negligence or wilful misconduct of such other Party or by breach by the other Party of its obligations under the Agreement.

16.2 Subject always to clauses 16.3 and 16.4:

- the aggregate liability of the Contractor in respect of all Losses howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Deliverables, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise, shall in no event exceed the amount stated in Section 18 (Contractor's General Liability Cap) of the Order
- the aggregate liability of each of the Customer and any Co-funders in respect of all Losses howsoever caused, whether arising from breach of the Agreement, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise, shall in no event exceed a sum equal to the proportion of the Charges paid or payable to the Contractor by that Customer or Co-funder
- no Party shall be liable to any other Party for any:
 - loss of profits
 - loss of business
 - loss of revenue
 - loss of or damage to goodwill
 - loss of savings (whether anticipated or otherwise)
 - any indirect, special or consequential loss or damage

16.3 Nothing in the Agreement shall be construed to limit or exclude any Party's liability for:

- death or personal injury caused by its negligence or that of its staff, directors, officers, employees, students, agents, consultants and contractors
- bribery, fraud or fraudulent misrepresentation by it or that of its staff, directors, officers, employees, students, agents, consultants and contractors
- breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982
- any other matter which, by law, may not be excluded or limited

16.4 The Contractor's liability: - under the indemnities in clauses 4.3 and 10.7 shall be unlimited - for breach of clause 15 or under any indemnity set out in this Agreement (or both) shall in each case be limited to the higher of: - £5,000,000 per claim - where applicable, the financial cap on liability specified in Section 24 (Special Terms) of the Order

16.5 Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Agreement, including any indemnities.

16.6 If more than one Contractor is party to the Agreement, each Contractor Party is fully responsible for both their own liabilities and the liabilities of the other Contractors.

16.7 Subject to clauses 16.1 and 16.3, the Customer does not accept any liability for any Losses the Contractor may incur or suffer arising from any access to the Customer's premises and any labour and equipment that may be provided by the Customer in connection with the Deliverables. The Contractor acknowledges that, subject to the restrictions and limitations on liability set out in the remainder of this clause 16, any Losses suffered by a member of the Defra Group who is not a Co-funder that are caused by a breach, default, act, omission, negligence or statement of the Contractor or its staff, directors, officers, employees, agents, consultants or contractors shall be deemed to be defaults, claims, losses or damages that have been suffered by, and which are recoverable by, the Customer.

16.8 If one or more Co-funders is party to the Agreement, each Co-funder is fully responsible for its own liabilities and not the Customer.

17. Force majeure

No Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from a Force Majeure Event provided the affected Party uses all reasonable measures practical to reduce the impact of the Force Majeure Event. Each Party shall promptly notify each other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such Force Majeure Event continues for a continuous period of more than 30 days, any Party may terminate the Agreement by written notice to each other Party. Any failure or delay by the Contractor to perform its obligations under the Agreement that is due to a failure or delay by an agent, sub-contractor or Staff (or any combination of the 3) will only be considered a Force Majeure Event if that third party is itself prevented from complying with an obligation to the Contractor due to a Force Majeure Event. Where a Party terminates under this clause 17 each Party must cover its own Losses.

18. Termination

18.1 In respect of the supply of Services, the Customer may terminate the Agreement at any time without reason or liability by notice in writing to the Contractor and any Co-funders to take effect on any date falling at least one month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice. 18.1 The Customer may terminate the Agreement by giving at least [30] days' written notice to the Contractor if the Contractor fails to deliver services or goods as per the agreed-upon milestones and specifications. The Contractor shall have the right to remedy any alleged breach within [30] days of receiving written notice from the Customer.

18.2 Without prejudice to any other right or remedy it might have including any other express rights of termination set out in this Agreement, the Customer may terminate the Agreement in whole or in part by written notice to the Contractor with immediate effect if any of the following apply:

18.2.1 In the Customer's reasonable opinion, the provision of the Deliverables (or any of them) will or is likely to conflict with the Customer's statutory obligations or where applicable with the Customer's obligations as a statutory consultee under any applicable legislation.

18.2.2 The Contractor (without prejudice to clause 18.2.6 or 18.2.10), is in material breach of any obligation under the Agreement which is not capable of remedy.

18.2.3 The Contractor repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement

18.2.4 (Without prejudice to clause 18.2.6 or 18.2.10) the Contractor is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Contractor receiving notice specifying the breach and requiring it to be remedied.

18.2.5 The Contractor undergoes a change of control within the meaning of section 450 of the Corporation Tax Act 2010 which isn't preapproved by the Customer in writing.

18.2.6 The Contractor breaches the provisions of clauses 8.2, 13, 14, 15 or 19 (or any combination of these clauses).

18.2.7 The Contractor suffers an Insolvency Event.

18.2.8 The Contractor fails to comply with legal obligations in the fields of environmental, social or labour law.

18.2.9 The Contractor challenges or disputes the validity or ownership of any of the Customer's or any Co-funder's Existing IPR or (where Option A or Option B is selected in the Order, and in the case of the Customer only) New IPR.

18.2.10 The Contractor fails to meet any agreed milestone within either of the following time frames, or repeatedly fails over a period of 3 consecutive months to satisfy agreed milestones by their agreed milestone delivery dates as set out in the Specification:

- 30 days
- as otherwise specified in Section 8 of the Order of the agreed milestone delivery date

18.2.11 The Contractor or any of its affiliates embarrass or bring the Customer or any Co-funders (or both) into disrepute or diminish the public trust in them.

18.3 The Contractor shall notify the Customer as soon as practicable of any change of control as referred to in clause 18.2.5 or any potential such change of control.

18.4 Any licences granted under this Agreement which expressly or by implication are without limitation of period shall continue notwithstanding any expiry or termination of this Agreement, save that the Customer and each of the Co-funders (if any) may terminate any licences granted by it to the Contractor immediately by notice in writing to the Contractor if the Contractor:

- uses or permits any third party to use the Customer's or Co-funder's (as the case may be) Existing IPR or (where Option A or Option B is selected in the Order, and in the case of the Customer only) New IPR outside the scope of such licences, without the Customer's or Co-funder's prior written consent
- undergoes a change of control within the meaning of section 450 of the Corporation Tax Act 2010 which is not preapproved by the Customer in writing
- breaches the provisions of clauses 13, 14, 15 or 11 (or any combination of these clauses)
- suffers an Insolvency Event
- fails to comply with legal obligations in the fields of environmental, social or labour law
- challenges or disputes the validity or ownership of any of the Customer's or Co-funder's (as the case may be) Existing IPR or (where Option A or Option B is selected in the Order, and in the case of the Customer only) New IPR

18.5 Termination or expiry of the Agreement shall be without prejudice to the rights of any Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under clauses 2, 3.1, 4.3, 5.5, 5.6, 6.2, 6.4, 6.5, 8, 10, 12.2, 13, 14, 15, 16, 18.6, 18.7, 19.4, 19.6, 20.4, 21, 11, 25.4, 25.9, 25.10, 25.12, 27.2 and 28 and any other term or condition of the Agreement that either expressly or by implication has effect after termination. Termination of any licences under clause 18.4 shall be without prejudice to any licences granted by the Contractor to the Customer or any Co-funders (or both), which shall remain in full force and effect.

18.6 Upon termination or expiry of the Agreement, the Contractor shall comply with the following:

18.6.1 At no cost give all reasonable assistance to the Customer, any Co-funders and any incoming contractor of Deliverables.

18.6.2 Return all property, requested documents, information and data belonging to the Customer or Co-funder (or both) to the Customer or relevant Co-funder (or both) as soon as reasonably practicable, with the exception of such information and materials belonging to the Customer and any Co-funders as are reasonably required by the Contractor to enjoy the benefit of any continuing licences granted to it under this Agreement

18.7 On termination under this clause 18 of any licences granted to the Contractor under this Agreement, the Contractor shall immediately destroy or, at the request of the Customer or Co-funder (as the case may be), return all information and materials belonging to the Customer or relevant Co-funder then in its or its contractors' possession, custody or control, including all Confidential Information of the Customer or relevant Co-funder relating to such licences, and shall not retain any copies of the same.

18.8 As soon as it is aware of it the Contractor and Staff must report to the Customer any actual or suspected breach of Law. The Contractor must not retaliate against any of the Staff who in good faith reports a breach to the Customer or any other person.

18.9 Where the Customer terminates the Agreement under clauses 18.2 or 20.4.1 (or both), all of the following apply:

- if requested by the Customer, the Contractor shall be responsible for the Customer's reasonable costs of procuring replacement Deliverables for the rest of the term of the Agreement (had the Agreement not been terminated) up to an amount equal to 125% of the total Charges paid or payable over the duration of the Agreement (including those Charges as would have become payable had the Agreement not been terminated early the payment obligations of the Customer or any Co-funder (or both) under the terminated Agreement stop immediately, save for any outstanding payment due to the Contractor for Deliverables completed.
- the Contractor must repay to the Customer or any Co-funders (or both) all the Charges that it has been paid in advance for Deliverables that it has not provided as at the date of termination or expiry
- The Customer reserves the right to set off any payments due to the Contractor against the Customer's reasonable costs as stated above and any advance Charges paid by the Customer or any Co-funders , to the Contractor for Deliverables that the Contractor has not completed as at the date of termination or expiry.

18.10 Where the Customer has the right to terminate the Agreement, it can terminate or suspend (for any period), all or part of it. If the Customer suspends the Agreement it can provide the Deliverables itself or buy them from a third party.

18.11 The Customer can only partially terminate or suspend the Agreement if the remaining parts of it can still be used to effectively deliver the intended purpose.

18.12 The Parties must agree any necessary variation where there is a suspension or partial termination of the Agreement by the Customer, but the Contractor may not either:

- reject the variation

- increase the Charges except where the right to partial termination is under clause 18.1

18.13 The Customer can still use other rights available, or subsequently available to it if it acts on its rights under clauses 18.10 to 18.12.

19. Compliance and insurance

19.1 The Contractor shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Contractor in the performance of its obligations under the Agreement.

19.2 The Contractor shall meet the following requirements:

19.2.1 Comply with the reasonable requirements of the Customer's security arrangements.

19.2.2 Comply with all the Customer's health and safety measures including the Customer's current health and safety policy while at the Customer's premises, as provided to the Contractor.

19.2.3 Comply with the requirements of the Health and Safety at Work etc Act 1974, and with any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Customer's premises.

19.2.4 Make available to the Customer the Contractor's health and safety policy statement on request.

19.2.5 Notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

19.2.6 Perform its obligations under the Agreement in accordance with all applicable employment and equality Law, including protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise and any other requirements and instructions which the Customer reasonably imposes related to equality Law and the Customer's equality, diversity and inclusion policies (as amended and provided to the Contractor from time to time). The Contractor must use all reasonable endeavours, and inform the Customer of the steps taken, to prevent anything that is considered to

be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Agreement.

19.2.7 Take all reasonable steps to secure the observance of clause 19.2.6 by all Staff.

19.2.8 Supply the Deliverables and any packaging in accordance with the Customer's environmental policy as provided to the Contractor from time to time.

19.2.9 Comply and procure that its subcontractors comply with the [Supplier Code of Conduct](#) as such Code of Conduct may be updated from time to time, and such other sustainability requirements as set out in the Order.

19.2.10 Share the Customer's commitment to ensure that workers employed within its supply chains are treated fairly, humanely and equitably. The Customer requires the Contractor to take reasonable steps to identify areas of risk associated with this Agreement to ensure that it is meeting the International Labour Organisation (ILO) [International Labour Standards](#) and as a minimum comply with the Fundamental Standards under the ILO's [Conventions and Recommendations](#), encompassing the right to freedom of association and collective bargaining, prohibition of forced labour, prohibition of discrimination and prohibition of child labour.

19.2.11 Ensure that it and its sub-contractors:

- pay staff fair wages
- implement fair shift arrangements, providing sufficient gaps between shifts, adequate rest breaks and reasonable shift length, and other best practices for staff welfare and performance

19.2.12 Ensure Staff and sub-contractors comply with the provisions of the Modern Slavery Act 2015 including Section 54 of the Act which requires certain organisations to publish annual modern slavery statements.

19.2.13 Throughout the duration of the Agreement:

- report the discovery or suspicion of any slavery, trafficking, forced labour, child labour, involuntary prison labour or labour rights abuses by it or its subcontractors to the Customer and Modern Slavery Helpline (0800 0121 700) and relevant national or local law enforcement agencies
- if the Contractor or the Customer identifies any occurrence of modern slavery connected to this Agreement, comply with any request of the Customer to submit a remedial action plan which follows the form set out in Annex D of the [Tackling Modern Slavery in Government Supply Chains guidance](#)

19.3 The Contractor in the performance of this Agreement should use reasonable endeavours to adopt a sound proactive environmental approach, designed to minimise harm to the environment, to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of single-use plastic, ozone depleting substances

and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health or the environment (or both), and be able to provide proof of so doing to the Customer on demand.

19.4 The Contractor shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

- the Official Secrets Acts 1911 to 1989
 - section 182 of the Finance Act 1989
 - the Public Sector Equality duty under section 149 of the Equality Act 2010
- 19.5 The Contractor shall ensure it has insurance cover for this Agreement that is in line with industry best practice and as set out in the Order.

19.6 The Contractor indemnifies the Customer, each member of the Defra Group and any Co-funders against any costs resulting from any default by the Contractor relating to any applicable Law to do with the Agreement.

20. Prevention of fraud, bribery and corruption

20.1 The Contractor shall not offer, give, or agree to give anything, to any person as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or any other public function or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement or any other public function.

20.2 The Contractor shall take all reasonable steps (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with good industry practice, to prevent fraud by the Staff and the Contractor (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

20.3 If the Contractor notifies the Customer as required by clause 20.2, the Contractor must respond promptly to their further enquiries, co-operate with any investigation and allow the audit of any books, records and relevant documentation (redacted where need to preserve the Contractor confidential information).

20.4 If the Contractor or the Staff engages in conduct prohibited by clause 20.1 or commits fraud in relation to the Agreement or any other agreement with the Crown (including the Customer) the Customer may take one of the following actions:

20.4.1 Terminate the Agreement and recover from the Contractor the amount of any loss suffered by the Customer, any member of the Defra Group or any Co-funders (or any combination of these Parties) resulting from the termination, including the cost

reasonably incurred by the Customer of making other arrangements for the supply of the Deliverables and any additional expenditure incurred by the Customer, any member of the Defra Group or any Co-funders throughout the remainder of the Agreement.

20.4.2 Recover in full from the Contractor any other loss sustained by the Customer, any member of the Defra Group or any Co-funders in consequence of any breach of this clause

20.4.3 Require the Contractor to remove any Staff from providing the Deliverables if their acts or omissions have caused the default.

21. Dispute resolution

21.1 The contract managers of each Party shall attempt in good faith to negotiate a settlement to any dispute between the Parties arising out of or in connection with the Agreement within 14 days of a written request from another Party. If the contract managers are unable to settle the dispute any Party may on notice to the other escalate the dispute to an appropriately senior representative of each Party.

21.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 21.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the 'Mediator') using the Centre for Effective Dispute Resolution ('CEDR') Model Mediation Procedure current at the time of the dispute, with the Mediator chosen by agreement between the Parties or nominated by CEDR if the Parties cannot agree on a mediator within one month. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

21.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, any Party may exercise any remedy it has under applicable law and the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

- determine the dispute
- grant interim remedies
- grant any other provisional or protective relief

21.4 The Contractor cannot suspend the performance of the Agreement during any dispute.

22. Biological materials

22.1 The Contractor shall ensure that any Biological Materials collected by or on behalf of the Contractor in the course of performance of the Services meet the following requirements:

- 22.1.1 Collected and used in accordance with the Conventions, where relevant.
- 22.1.2 Made available to the Customer (or such other person as the Customer may specify) whenever, wherever and in whatever format the Customer may reasonably require for any purpose (including, without limitation, handover on termination of the Services).
- 22.1.3 Stored for whatever period is reasonably required by the Customer (or, in the absence of any such requirement, an appropriate period in all the circumstances taking into account the nature of the relevant Biological Materials) following termination of the Agreement.

22.2 The Contractor recognises and acknowledges for the purposes of clause 22.1 that Key Biological Materials in its possession are likely to require long term maintenance and shall put in place appropriate procedures for ensuring that relevant samples are selected for this purpose where applicable.

22.3 The Contractor shall identify any requirements of the Conventions (including, without limitation, benefit-sharing requirements arising from use of Biological Materials) which may apply in connection with the Services. The Contractor shall comply with any such requirements and inform the Customer of the same. This clause 22.3 shall be without prejudice to the generality of clause 19.

22.4 Failure to comply with any obligation in this clause 22 shall amount to a material breach for the purposes of clauses 18.2.2 and 18.2.4. For the avoidance of doubt, where no Biological Materials are, or are to be, collected by or on behalf of the Contractor in the course of performance of the Agreement all references to Biological Materials in this clause 22 or elsewhere in the Agreement shall have no effect.

23. Reporting

23.1 Unless otherwise authorised in writing by the Customer, the Contractor shall submit an annual report (the 'Annual Report') for each Project Year to the Customer and any Co-funders in accordance with this clause 23.

23.2 The Contractor shall provide the Annual Report in the format specified by or agreed with the Customer, no later than 4 weeks after the end of each Project Year, or, for work lasting one year or less, no later than 4 weeks after completion of the Services.

23.3 The Annual Report shall:

- list the scientific objectives set out in the Specification, indicating where amendments have been agreed
- indicate in non-scientific terms the scientific progress achieved since the Start Date or since the last Annual Report; how this relates to the policy objectives as set out in the relevant current statement of policy rationale and programme objectives relating to research and development issued by the Customer in accordance with the Specification, plus any findings of particular interest
- indicate whether the scientific objectives in the Specification are appropriate for the remainder of the term of the Agreement, giving reasons for any changes, together with financial, Staff and time implications
- list the milestones for the relevant Project Year as set out in the Specification, indicating which milestones have been met and whether the remaining milestones appear realistic
- list any outputs, such as published papers or presentations, and identify any opportunities for exploiting any intellectual property rights or technology transfer arising out of the Services and any action taken to protect and exploit such intellectual property rights
- comment briefly on any new scientific opportunities which may arise from the Services

23.4 Unless approved in writing by the Customer, the Contractor shall submit to the Customer and any Co-funders by the completion date of the Services a final report (the 'Final Report') in a format specified by the Customer. The Final Report shall include the following:

23.4.1 The Services' code and title as set out in the Specification, the name of the Contractor, the total costs, and the commencement date and date of completion of the Services.

23.4.2 An executive summary of not more than 2 sides of A4 written in a style understandable to the intelligent non-scientist. This should include:

- the main objectives of the Services
- the methods and findings of the research
- any other significant events and options for new work

23.4.3 A scientific report in accordance with clause 23.5.

23.5 The scientific report referred to in clause 23.4.3 above shall contain:

- the scientific objectives as set out in the Specification
- the extent to which the objectives set out in the Specification have been met
- details of methods used and the Results obtained, including statistical analysis where appropriate

- a discussion of the Results and their reliability
- the main implications of the findings
- possible future work
- any action resulting from the research, for example, protection of intellectual property rights and knowledge transfer

23.6 Notwithstanding clauses 13.4 to 13.7, the Customer may publish the Final Report on a website. When submitting the Final Report to the Customer and any Co-funders, the Contractor shall indicate any information contained in the Final Report which it considers to be commercially sensitive or which might otherwise merit non-publication. The Customer shall not disclose such information without first having consulted the Contractor (without prejudice to the Customer's discretion as to whether to publish following such consultation).

23.7 The Customer reserves the right to reject any Annual Report or Final Report submitted by the Contractor (including any revised versions submitted pursuant to this clause 23.7) which is not, in the reasonable opinion of the Customer, satisfactory, either in form or content, having regard to the provisions of this Agreement. If an Annual Report or Final Report is rejected by the Customer, the Contractor shall remedy any deficiencies identified by the Customer and submit a revised version at no additional cost to the Customer or any Co-funders.

23.8 The Contractor shall supply any additional reports, including financial reports, in respect of the Services, at such time or times, and in such form, as the Customer may reasonably require. Without prejudice to the generality of the foregoing, the Contractor shall provide to the Customer such information as the Customer may reasonably require regarding commercial exploitation of the Results, including details of any licences granted to third parties in respect of any intellectual property rights in the same. The Contractor shall further keep at its normal place of business detailed accurate and up to date records and accounts showing details of its commercial exploitation of the Results including the sale of any products or services which incorporate the Results, Income received, allowable costs deducted and the amount of licensing revenues received by it in respect of the Results in a format sufficient to ascertain that revenue sharing pursuant to the Agreement has been properly accounted for and apportioned in accordance with the Agreement.

23.9 The Contractor shall, subject to reasonable notice, attend all meetings specified in the Agreement or otherwise arranged by the Customer for the purpose of discussion of the Services.

24. Co-funding

24.1 This clause 24 sets out additional terms to apply to the Agreement where one or more Co-funders are party to the Agreement.

24.2 Any reference to Co-funders shall, where the context requires, be read in the singular where only one Co-funder is a party to the Agreement. Any reference to Co-funder shall, where the context requires, be read in the plural where more than one Co-funder is a party to the Agreement.

24.3 If any Co-funders fail to make any payment in accordance with the Order, the Customer may issue a notice to the Contractor identifying the default of the relevant Co-funders and, without prejudice to any other rights or remedies, terminate the Agreement with immediate effect.

24.4 Each Co-funder agrees to comply with the obligations expressed to apply to the Customer in clause 7 with respect to that part of the Charges which is payable by the relevant Co-funder as set out in the Order. Any reference to 'the Customer' in clause 7 shall be interpreted as if it read "the Customer or the Co-funders, as the case may be".

24.4.1 The Contractor shall not (and shall ensure that any other person engaged in relation to the Agreement shall not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of the Co-funders.

25. General

25.1 Each of the Parties represents and warrants to the others that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.

25.2 The Contractor warrants and represents that:

- it is a legally valid and existing organisation incorporated in the place it was formed
- its tender (if any) and all statements made and documents submitted as part of the procurement are and remain true and accurate
- all information, data and materials provided by it to the Customer or any Co-funders (or both) pursuant to this Agreement will be, to the best of its knowledge, accurate and complete in all material respects, and it is entitled to provide the same without recourse to any third party
- there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its company group that might affect its ability to perform the Agreement
- all necessary rights, authorisations, licences and consents (including in relation to intellectual property rights) are in place to enable the Contractor to perform its obligations under the Agreement and the Customer, each member of the Defra Group and any Co-funders to receive the Deliverables

- it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Agreement
- it is not impacted by any Insolvency Event

25.3 The warranties and representations in this Agreement made by the Contractor are repeated each time the Contractor provides Goods or Services (or both) under the Agreement.

25.4 The Contractor indemnifies the Customer each member of the Defra Group and any CO funders for any direct claim which is made against the Customer, another member of the Defra Group and/or any Co-funder arising from each of the following: wilful misconduct of the Contractor, any of its subcontractors or Staff that impacts the Agreement

- non-payment by the Contractor of any tax or National Insurance

25.5 If the Contractor becomes aware of a representation or warranty made in relation to the Agreement that becomes untrue or misleading, it must immediately notify the Customer.

25.6 All third party warranties and indemnities covering the Goods or Services (or both) must be assigned for the Customer's and any Co-funder's benefit by the Contractor.

25.7 Save in relation to any rights or benefits which are conferred on members of the Defra Group, a person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties. No third parties (other than members of the Defra Group) may use the Contracts (Rights of Third Parties) Act ('CRTPA') to enforce any term of the Agreement unless stated (referring to CRTPA) in the Agreement.

25.8 The Agreement cannot be varied except in writing signed by a duly authorised representative of the Parties. Any such amendments may be made by the Parties without the consent of any members of the Defra Group (other than the Customer).

25.9 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

25.10 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to each other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of agreement shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

25.11 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. No Party shall have, nor represent that it has, any authority to make any commitments on any other Party's behalf.

25.12 Except as otherwise expressly provided by the Agreement, all remedies available to any Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

25.13 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

25.14 Each Party will, at the request and cost of another Party, do all things which may be reasonably necessary to give effect to the meaning of this Agreement.

25.15 Nothing in this Agreement shall prejudice, conflict with or affect the exercise by the Customer of its statutory functions, powers, rights, duties, responsibilities or obligations arising or imposed under any Law, legislative provision enactment, bye-law or regulation whatsoever, nor shall it fetter the exercise of any discretion the Customer may have.

26. Notices

26.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 26.3, email to the address of the relevant Party set out in the Order, or such other address as that Party may from time to time notify to the other or others in accordance with this clause.

26.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5:00pm on a Working Day. Otherwise, delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

26.3 Notices under clauses 17 and 18 may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 26.1.

26.4 This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

27. Conflict of interest

27.1 'Conflict of Interest' for the purpose of this clause 27 shall mean a conflict between the financial or personal duties of the Contractor or the Staff and the duties owed to the Customer or any Co-funders (or both) under the Agreement, in the reasonable opinion of the Customer.

27.2 The Contractor must take action to ensure that neither the Contractor nor the Staff are placed in the position of an actual, potential or perceived Conflict of Interest.

27.3 The Contractor must promptly notify and provide details to the Customer if an actual, potential or perceived Conflict of Interest happens or is expected to happen.

27.4 The Customer will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Customer, such measures do not or will not resolve an actual or potential Conflict of Interest, the Customer may terminate the Agreement immediately by giving notice in writing to the Contractor where there is or may be an actual or potential Conflict of Interest shall apply.

28. Governing law and jurisdiction

The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

Annex 1: Further data protection provisions

1. Definitions

1.1 In addition to the definitions set out in Clause 1.1, the following definitions shall apply in this Annex:

'Controller' has the meaning given to it in the UK GDPR or the EU GDPR as the context requires.

'Customer Data' means:

- the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Customer's confidential information, and which either:
 - are supplied to the Contractor by or on behalf of the Customer
 - the Contractor is required to generate, process, store or transmit pursuant to the Agreement
- any Personal Data for which the Customer is the Controller

'Data Loss Event' means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, or actual or potential loss or destruction (or both) of Personal Data in breach of this Agreement, including any Personal Data Breach.

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

'Data Protection Officer' has the meaning given to it in the UK GDPR or the EU GDPR as the context requires.

'Data Subject' has the meaning given to it in the UK GDPR or the EU GDPR as the context requires.

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

'Good Industry Practice' means standards, practices, methods and procedures conforming to the Law and the exercise of 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 within the relevant industry or business sector.

'Independent Controllers' refers to 2 or more parties that are Controllers of the same Personal Data, where there is no element of joint control.

'Personal Data' has the meaning given to it in the UK GDPR or the EU GDPR as the context requires.

'Personal Data Breach' has the meaning given to it in the UK GDPR or the EU GDPR as the context requires and includes any breach of Data Protection Legislation relevant to Personal Data processed pursuant to the Agreement.

'Processor' has the meaning given to it in the UK GDPR or the EU GDPR as the context requires.

'Processor Personnel' means all directors, officers, employees, agents, consultants and suppliers of the Processor or of any Subprocessor (or both) engaged in the performance of its obligations under the Agreement.

'Protective Measures' technical and organisational measures which must take account of:

- the nature of the data to be protected
- harm that might result from Data Loss Event
- state of technological development
- the cost of implementing any measures

This includes:

- pseudonymising and encrypting Personal Data
- ensuring confidentiality, integrity, availability and resilience of systems and services
- ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident
- regularly assessing and evaluating the effectiveness of such measures adopted by it

'Subprocessor' means any third party appointed to process Personal Data on behalf of the Processor related to the Agreement.

2. Data protection

2.1 The Contractor must not remove any ownership or security notices in or relating to the Customer Data.

2.2 The Contractor must make accessible back-ups of all Customer Data, stored in an agreed off-site location and send the Buyer copies every 6 months.

2.3 The Contractor must ensure that any Contractor system holding any Customer Data, including back up data, is a secure system that complies with the security requirements specified in writing by the Customer (where any such requirements have been provided).

2.4 If at any time the Contractor suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded, then the Contractor must immediately notify the Customer and suggest remedial action.

2.5 If the Customer Data is corrupted, lost or sufficiently degraded so as to be unusable the Customer may either or both:

- tell the Contractor to restore or get restored Customer Data as soon as practical but no later than 5 Working Days from the date that the Customer receives notice, or the Contractor finds out about the issue, whichever is earlier
- restore the Customer Data itself or using a third party

2.6 The Contractor must pay each Party's reasonable costs of complying with paragraph 2.5 unless the Customer is at fault.

2.7 The Contractor:

- must provide the Customer with all Customer Data in an agreed open format within 10 Working Days of a written request
- must have documented processes to guarantee prompt availability of Customer Data if the Contractor stops trading
- must securely destroy all storage media that has held Customer Data at the end of life of that media using Good Industry Practice
- must securely erase all Customer Data and any copies it holds when asked to do so by the Customer unless required by Law to retain it
- indemnifies the Customer against any and all Losses incurred if the Contractor breaches this Annex or any Data Protection Legislation

2.8 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under the Agreement dictates the status of each party under the Data Protection Act (DPA) 2018. In respect of certain Personal Data under the agreement, a Party may act as:

- 'Controller' in respect of the other Party who is 'Processor'
- 'Processor' in respect of the other Party who is 'Controller'
- 'Joint Controller' with the other Party
- 'Independent Controller' of the Personal Data where the other Party is also 'Controller'

The Parties shall specify in Appendix 4 of the Order – Processing Personal Data which scenario they think shall apply in each situation. In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement paragraphs that are necessary to comply with UK GDPR Article 26.

Where one Party is Controller and the other Party its Processor

2.9 Where a Party is a Processor, it must only process Personal Data if authorised to do so in Appendix 4 of the Order – Processing Personal Data by the Controller. Any further written instructions relating to the processing of Personal Data are incorporated into Appendix 4 of the Order– Processing Personal Data.

2.10 The Processor must give all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment before starting any processing, including:

- a systematic description of the expected processing and its purpose
- the necessity and proportionality of the processing operations
- the risks to the rights and freedoms of Data Subjects
- the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data

2.11 The Processor must notify the Controller immediately if it thinks the Controller's instructions breach the Data Protection Legislation.

2.12 The Processor must put in place appropriate Protective Measures to protect against a Data Loss Event which must be approved by the Controller.

2.13 If lawful to notify the Controller, the Processor must promptly notify the Controller if the Processor is otherwise required to process Personal Data by Law before processing it.

2.14 The Processor must use all reasonable endeavours to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

- are aware of and comply with the Processor's duties under this Annex
- are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor
- are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise allowed by the Agreement
- have undergone adequate training in the use, care, protection and handling of Personal Data

2.15 Where the Personal Data is subject to UK GDPR, the Processor must not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- the transfer is in accordance with Article 45 of the UK GDPR (or section 73 of DPA 2018)
- the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) as determined by the Controller which could include relevant parties entering into the International Data Transfer Agreement (the 'IDTA'), or International Data Transfer Agreement Addendum to the European Commission's SCCs (the 'Addendum'), as published by the Information Commissioner's Office from time to time as well as any additional measures determined by the Controller

- the Data Subject has enforceable rights and effective legal remedies when transferred
- the Processor meets its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred
- the Processor complies with the Controller's reasonable prior instructions about the processing of the Personal Data

2.16 Where the Personal Data is subject to EU GDPR, the Processor must not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- the transfer is in accordance with Article 45 of the EU GDPR
- the Controller or Processor has provided appropriate safeguards in relation to the transfer, in accordance with Article 46 of the EU GDPR as determined by the Controller which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time as well as any additional measures determined by the Controller
- the Data Subject has enforceable rights and effective legal remedies
- the Processor complies with its obligations under the EU GDPR by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations)
- the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data

2.17 The Processor must notify the Controller immediately if it:

- receives a Data Subject Access Request (or purported Data Subject Access Request)
- receives a request to rectify, block or erase any Personal Data
- receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation
- receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement
- receives a request from any third Party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law
- becomes aware of a Data Loss Event

2.18 Any requirement to notify under paragraph 2.17 includes the provision of further information to the Controller in stages as details become available.

2.19 The Processor must promptly provide the Controller with full assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 2.17. This includes giving the Controller:

- full details and copies of the complaint, communication or request
- reasonably requested assistance so that it can comply with a Data Subject Access Request within the relevant timescales in the Data Protection Legislation
- any Personal Data it holds in relation to a Data Subject on request
- assistance that it requests following any Data Loss Event
- assistance that it requests relating to a consultation with, or request from, the Information Commissioner's Office or any other regulatory authority

2.20 The Processor must maintain full, accurate records and information to show it complies with this Annex. This requirement does not apply where the Processor employs fewer than 250 staff, unless either the Controller determines that the processing:

- is not occasional
- includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR
- is likely to result in a risk to the rights and freedoms of Data Subjects

2.21 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.

2.22 Before allowing any Subprocessor to process any Personal Data, the Processor must:

- notify the Controller in writing of the intended Subprocessor and processing
- obtain the written consent of the Controller
- enter into a written contract with the Subprocessor so that this Annex applies to the Subprocessor
- provide the Controller with any information about the Subprocessor that the Controller reasonably requires

2.23 The Processor remains fully liable for all acts or omissions of any Subprocessor.

2.24 At any time the Customer can, with 30 Working Days' notice to the Contractor, change this Annex to replace it with any applicable standard clauses (between the controller and processor) or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Agreement).

2.25 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office or any other regulatory authority.

Where both Parties are Independent Controllers

2.26 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the joint control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.

2.27 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.

2.28 Where a Party has provided Personal Data to the other Party in accordance with Paragraph 2.26 of this Annex, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.

2.29 The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the processing of Personal Data for the purposes of the Agreement.

2.30 The Parties shall only provide Personal Data to each other:

- to the extent necessary to perform their respective obligations under the Agreement
- in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR)
- where it has recorded it in Appendix 4 of the Order

2.31 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.

2.32 Party processing Personal Data for the purposes of the Agreement shall maintain a record of its processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.

2.33 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the agreement ('Request Recipient'):

- the other Party shall provide any information or assistance (or both) as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient
- where the request or correspondence is directed to the other Party or relates to that other Party's processing of the Personal Data (or both), the Request Recipient will:
 - promptly, and in any event within 5 Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party
 - provide any information or assistance (or both) as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation

2.34 Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Agreement and shall:

- do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach
- implement any measures necessary to restore the security of any compromised Personal Data
- work with the other Party to make any required notifications to the Information Commissioner's Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein)
- not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law

2.35 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Agreement as specified in Appendix 4 of the Order.

2.36 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Agreement which is specified in Appendix 4 of the Order.

IN WITNESS HEREOF, the Parties have caused this Agreement to be executed by their duly authorised representatives to be effective as of the date of signing.

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