

CONTRACT FOR THE PROVISION OF GOODS AND/OR SERVICES

Agriculture and Horticulture Development Board

and

Mercer Limited

**Contract for the Supply of
IAS19 Calculations (Lot 2)**

FORM OF AGREEMENT

THIS CONTRACT IS MADE ON

BETWEEN

Agriculture and Horticulture Development Board, of Stoneleigh Park, Kenilworth, Warwickshire CV8 2TL ('**AHDB**')

AND

Mercer Limited, of 1 Tower Place West, Tower Place, London, EC3R 5BU ('**the Supplier**')

AHDB and the Supplier are the Parties to the Contract.

WHEREAS

- A. AHDB wishes to acquire general description of goods or services (see Schedule A).
- B. The Supplier is willing to supply the Goods and/or Services in accordance with this Contract.

IT IS HEREBY AGREED

1. The Supplier agrees to supply the Goods and/or Services in accordance with this Contract, including Schedule A and the Appendix.
- 1.1. Unless otherwise specified, the Supplier shall supply the Goods and/or Services to the Principal Office.
2. Subject to the Supplier's compliance with this Contract including any milestones, AHDB agrees to make payments in accordance with Schedule B.
3. The Parties agree to comply with AHDB's Terms and Conditions for the Purchase of Goods and Services version 2018A ('AHDB Terms' - see Annex), which are incorporated into this Contract.
4. This Contract consists of:
 - this Form of Agreement;
 - Schedule A (Specification, Milestones, page 5), including the Appendix (Specification Details, page 43);
 - Schedule B (Payment and Invoicing, page 6);
 - Schedule C (Contacts, page 7);
 - Annex (AHDB Terms, page 9); and
 - Annex 2 (Data Processing and Protection of Personal Data, page 36,

each of which together with any documents specified therein including the Appendix is incorporated into and forms part of the Contract.

- 4.1. In the case of any conflict or inconsistency, documents shall take precedence in the order in which they appear in Clause 4 above.
- 4.2. Subject to public procurement law, this Contract including the Specification may be amended. Any amendment shall be agreed by the Parties in Writing and shall have no effect unless it has been so agreed.
- 4.3. This Contract and any amendment to it may be executed in counterpart and by the Parties on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.
5. The Contract shall commence or be deemed to have commenced on 1st August, 2021 ('Commencement Date').
 - 5.1. The Supplier shall complete its performance of the Contract not later than 31st July 2023 ('Completion Date'). Details of optional extension periods can be found within the Appendix, page 43.
 - 5.2. Any date in this Contract may be amended in advance by agreement in Writing and any dates that are consequently to be amended shall be similarly agreed.
 - 5.2.1. Any amendment to this Contract shall be compliant with the public procurement principles underlying the Public Contracts Regulations 2015.
 - 5.3. Notwithstanding any act of termination or the achievement of the Completion Date, the relevant provisions of this Contract shall remain in effect insofar as is necessary to ensure the performance of all obligations and the satisfaction of all liabilities and to enable the exercise of all rights under the Contract in each case as such shall exist at the time of such act or the Completion Date as appropriate.
6. Subject to Clause 6.4:
 - 6.1. The maximum total liability of each Party under this Contract shall be three times the amount set out in relation to that Party in Clause 6.2.
 - 6.2. In respect of any claim or series of connected claims arising out of the same cause in any year whether arising from negligence, breach of contract or otherwise:
 - (a) the maximum aggregate liability of AHDB shall be the greater of £100,000 or 125% of the cumulative total of the payments identified in Schedule B.
 - (b) the maximum aggregate liability of the Supplier shall be the greater of £1,000,000 or 125% of the cumulative total of the payments identified in Schedule B.
 - 6.3. The amounts above may only be amended in Writing and prior to the event in relation to which a claim is made.

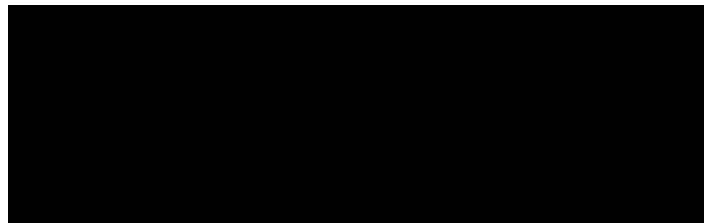
- 6.4. Nothing in this Contract shall limit either Party's liability for death or personal injury which may arise as a direct result of that Party's negligent act or omission, or for fraud or fraudulent misrepresentation.
7. For the avoidance of doubt:
- 7.1. The Supplier's standard terms and conditions for the supply of goods or services do not apply to this Contract except as may be specifically agreed in Writing.
- 7.2. In the event that the Contract applies only to the provision of Goods, the provisions in the Contract relating only to Services shall not apply.
- 7.3. In the event that the Contract applies only to the provision of Services, the provisions in the Contract relating only to Goods shall not apply.
- 7.4. Subject to any specific provision to the contrary, this Contract shall not apply to Research.
8. Any amendments to the Annex to this Contract shall be made as sub-clauses below
- 8.1. There are no amendments to the Annex.
9. Special Conditions
- 9.1. Any conditions specified in this Form of Agreement as Special Conditions shall have precedence over any other provision in this Contract.
- 9.2. There are no Special Conditions.

Signed for and on behalf of the Agriculture and Horticulture Development Board

Signature:

Name of signatory:

Date:

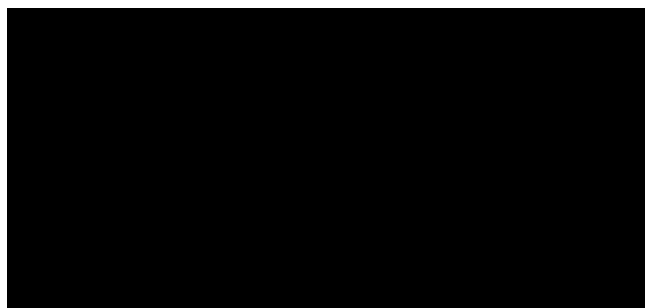
.....

Signed for and on behalf of the Supplier:

Signature:

Name of signatory:

Date:

.....

Schedule A Specification, Milestones

1. Specification

- 1.1. The Specification is detailed in the Appendix, page 43.
- 1.2. The Specification is based on:
 - the invitation and/or acceptance by AHDB for the supply of the Goods and/or Services, whether by tender or otherwise, and
 - the Supplier's offer but excluding any of the Supplier's terms and conditions indicated to be imposed thereby except insofar as such terms and conditions do not conflict with any other provision of this Contract.
- 1.3. Any amendment to the Specification agreed in accordance with this Contract shall be deemed to be included in the Appendix.

2. Milestones

- 2.1. The following milestones are agreed detailed in the Appendix, page 43.

- The remainder of this page is intentionally blank -

Schedule B Payment and Invoicing

1. AHDB shall raise a Purchase Order following its receipt of this Contract signed by the Supplier, the serial number of which shall be notified to the Supplier.
2. Subject to Condition 11.3.1 and any agreed amendment of this Contract in Writing, AHDB will pay the Supplier no more than [REDACTED] exclusive of VAT.
- 2.1. Subject to paragraph 2.1.1 below and compliance with this Contract including any milestones in Schedule A, the Supplier shall invoice AHDB monthly in retard for the Goods and Services supplied.
- 2.1.1. The Supplier shall invoice AHDB as follows for the Goods and Services supplied:

Description	Unit	Year 1 Price	Year 2 Price
Set up cost	One off	[REDACTED]	[REDACTED]
Annual Accounting	Per Annum	[REDACTED]	[REDACTED]
Lead Actuary	Per Hour	[REDACTED]	[REDACTED]
Actuarial Support Staff	Per Hour	[REDACTED]	[REDACTED]

- 2.2. If the Contract is amended, any payment schedule relating to this Contract may be adjusted appropriately.
- 2.3. The final claim for payment shall be made within four months of the Completion Date.

3. Invoices

- 3.1. An invoice shall be deemed to be proper if it is submitted in compliance with this Schedule, paragraph 3.2 below is satisfied, and it includes:
 - (a) the serial number of AHDB's Purchase Order;
 - (b) any AHDB reference code notified to the Supplier;
- 3.2. The following information shall be provided contemporaneously with the invoice:
 - (a) A description of the relevant period and activities to which the claim relates;
 - (b) a breakdown of the Goods and Services supplied and any other documentation reasonably required by AHDB to substantiate the invoice.
- 3.3. Unless otherwise agreed, the information required by paragraph 3.2 and a copy of each invoice shall be provided to AHDB's Primary Contact (electronic provision is acceptable).
- 3.4. VAT will only be paid if a proper VAT invoice is submitted. The Supplier must exercise due care not to charge VAT on claims which are not chargeable to VAT.
- 3.5. AHDB's address for submission of invoices will be:

Accounts Payable, AHDB, Stoneleigh Park, Kenilworth, Warwickshire CV8 2TL.
- 3.5.1. Unless otherwise agreed, invoices relating to sums payable by AHDB may be sent by electronic mail in pdf format to APTeam@ahdb.org.uk.

- The remainder of this page is intentionally blank -

Schedule C Contacts

1. Contact information provided by the Parties shall be deemed to be appropriately inserted below.
2. Unless otherwise agreed, the Primary Contact nominated by a Party shall represent the Party for the purposes of this Contract.

AHDB

3. AHDB's address for correspondence and service (excluding invoices, see Schedule B) will be:

AHDB, Stoneleigh Park, Kenilworth, Warwickshire CV8 2TL

- 3.1. Communications with AHDB shall be marked for the attention of the person named below as AHDB's Primary Contact.
4. AHDB's Primary Contact will be:

██████████

or such other person as AHDB may nominate.

- 4.1. AHDB's Primary Contact will accept communications by electronic mail ██████████ and (except for notices and other matters required to be in Writing) by telephone (☎ ██████████

Supplier

5. The Supplier's address for correspondence and service will be:

1 Tower Place West, Tower Place, London, EC3R 5BU

- 5.1. Communications shall be marked for the attention of the person named below as the Supplier's Primary Contact.
6. The Supplier's Primary Contact will be:

██████████

or such other person as the Supplier may nominate.

The Supplier's Primary Contact will accept communications by electronic mail ██████████ and (except for notices and other matters required to be in Writing) by telephone (☎ +44 (██████ ████████

7. The Key Personnel if any in relation to the supply of the Goods and/or Services will be:

████████████████████

████████████████████

████████████████████

████████████████████

██

- The remainder of this page is intentionally blank -

Annex AHDB Terms

Agriculture and Horticulture Development Board Terms and Conditions for the Purchase of Goods and Services version 2018A

<i>Condition</i>	<i>Page</i>
1 Definitions	10
2 Terms	14
3 Undertakings by the Supplier	14
4 Personnel	15
5 TUPE	16
6 Contracted Workers	17
7 Contacts and Communication	19
8 Operation of the Contract	19
9 Sub-contracting	21
10 Intellectual Property Rights	22
11 Payment	23
12 Liability	24
13 Delivery, Acceptance and Rejection	25
14 Termination	25
15 Transfer of Rights and Obligations	30
16 Freedom of Information and Data Protection	30
17 Dispute Resolution	31
18 General	32

1. DEFINITIONS

1.1. In this Contract the following words and expressions shall have the meanings given to them below, unless the context otherwise requires:

<i>Word Expression</i>	<i>or Meaning</i>
Academic Institution	<p>A body recognised by an EU member state within which it is situated as being constituted for the principal purposes of academic research and tertiary education. Unless otherwise specified any employee, Student, agent and consultant thereof relevant to the supply of the Goods and Services shall be deemed to be part of the Academic Institution.</p> <p>For the avoidance of doubt a subsidiary company or other affiliate of an Academic Institution shall not be an Academic Institution for the purposes of this Contract unless it is a body constituted <i>per se</i> for the principal purposes of academic research and tertiary education;</p>
AHDB	The Agriculture and Horticulture Development Board or any subsidiary thereof;
AHDB Stores	AHDB Stores, Avenue M, Stoneleigh Park, Kenilworth CV8 2LG
AHDB Terms	AHDB's Terms and Conditions for the Purchase of Goods and Services (the content of this Annex);
Annex	This annex incorporated into this Contract under Clause 4;
Appendix	The appendix incorporated into this Contract under Clause 4;
Bribery Act	The Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any relevant guidance or codes of practice issued by a government department concerning the legislation.
Business Hours	Monday to Friday between 9am and 5pm excluding Public and Bank holidays in the UK;
Commencement Date	The date set out in Clause 5 as it may have been amended;
Completion Date	The date set out in Clause 5.1 as it may have been amended;
Confidential Information	<p>Any information which has been designated as confidential by a Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of a Party and all personal data and sensitive data within the meaning of the Data Protection Legislation.</p> <p>Confidential Information does not include information which:</p> <p>(a) is public knowledge at the time of disclosure (otherwise than by breach of any obligation of confidentiality);</p>

		<p>(b) is in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;</p> <p>(c) is received from a third party who lawfully acquired it without restriction as to its disclosure; or</p> <p>(d) is independently developed without access to the Confidential Information;</p>
Contract		This written contract between AHDB and the Supplier as described in Clause 4;
Contracted Worker		A person complying with the criteria set out in Condition 6.1;
Contractor's Confidential Information		For the purposes of Condition 16.2.1 only, any information, which has been designated as confidential by AHDB or the Supplier in Writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
DDP		'Delivered Duty Paid' (as defined in the Incoterms® rules 2010);
Data Protection Legislation(DPL)		The Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive) or Directive 2002/58/EC (ePrivacy Directive) and/or the General Data Protection Regulation (EU) 2016/679 (GDPR) and/or any corresponding or equivalent national laws or regulations, including any amendment or update thereof and/or any new or updated laws and regulations relating to data protection including any judicial or administrative interpretation thereof and any guidance, guidelines, recommendations, codes of practice, approved codes of conduct or approved certification mechanisms issued by the Information Commissioner, any replacement body or other relevant government department or supervisory authority in relation to such legislation from time to time;
Due Date		Has the meaning given to it in Condition 11.3;
FOI Legislation		The Freedom of Information Act 2000 and similar legislation, as set out in Condition 16.1;
Form Agreement	of	The agreement on the supply of goods and/or services, to which the Schedules, Annex, Appendix and other documents are attached;
Goods		Any goods, being tangible moveable items, as described in the Specification that are agreed by this Contract to be purchased by AHDB from the Supplier whether or not in relation to the supply of Services;

Industry	The beef and sheep industry in England; the cereal industry in the United Kingdom; the horticulture industry in Great Britain; the milk industry in Great Britain; the oilseed industry in the United Kingdom; the pig industry in England or the potato industry in Great Britain, in each case as defined in the Agriculture and Horticulture Development Board Order 2008;
Intellectual Property Right	Any patent, utility model, invention, trade mark, service mark, logo, design right (whether registrable or otherwise), application for any of the foregoing, copyright, database right, domain name, Know-How, trade or business name, moral right and other similar right or obligation whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
Key Personnel	Any person identified by name or job title as Key Personnel by the Supplier in Schedule C. If no Key Personnel is identified therein, all references to Key Personnel in this Contract shall have no effect;
Know-How	All information not in the public domain held in any form (including that 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);
Latent Defect	Any hidden flaw, weakness or imperfection in the Goods which AHDB could not discover by reasonable inspection at the time of its receipt of the Goods other than any such defect that had been made known to AHDB by the Supplier in Writing prior to the delivery of the Goods;
Party	Each of AHDB and the Supplier;
Primary Contact	A person nominated as such from time to time by a Party in accordance with Schedule C;
Principal Office	AHDB, Stoneleigh Park, Kenilworth, Warwickshire CV8 2TL;
Purchase Order	AHDB's order for the supply of Goods and/or Services under the Contract;
Research	Any experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts and/or any planned research or critical investigation (including any critical topic review) aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services;
Schedule	A schedule incorporated into this Contract under Clause 4;
Services	Any services as described in the Specification that are agreed by this Contract to be purchased by AHDB from the Supplier whether or not in relation to the supply of Goods;
Special Condition	Any provision so specified in the Form of Agreement;

Specification	The specification provided in Schedule A and the Appendix, as it may have been amended;
Supplier	The natural or legal person named in the Form of Agreement as the Supplier. For the avoidance of doubt: <ul style="list-style-type: none"> • the Supplier may comprise more than one person, and • a person undertaking activities on behalf of the Supplier shall not comprise part of the Supplier unless he is named as such in the Form of Agreement;
Writing	Writing on paper, electronic mail, or any other medium that (a) allows information to be addressed to the recipient, (b) enables the recipient to store the information in a way accessible for future reference, and (c) allows the unchanged reproduction of the information stored.

1.2. Unless the context otherwise requires, references in the Contract:

- 1.2.1. to the Supplier or to AHDB shall, where appropriate, be references to any lawful successor, assignee or transferee;
- 1.2.2. to the Supplier shall refer to each person constituting the Supplier and where the Supplier consists of more than one person, subject to any allocation of specific work concerning any part(s) of the Contract to a person or any agreement otherwise, the obligations and liabilities of those persons in relation to the Contract shall be joint and several;
- 1.2.3. to Clauses are references to the clauses of the Form of Agreement, to Conditions are references to the terms and conditions of the AHDB Terms and to paragraphs are references to paragraphs in the referring Appendix or Schedule unless otherwise indicated.
- 1.2.4. to 'person' or 'third party' include any individual, body corporate, unincorporated association, company, corporation, firm, partnership, joint venture, public authority, organisation, institution, trust or agency and any other person whether or not having a separate legal personality and shall include subject to these Conditions the successors, transferees and assigns of such a person;
- 1.2.5. to one gender include all genders;
- 1.2.6. to the singular include the plural and vice versa;
- 1.2.7. to 'includes' or 'including' shall mean without limitation;
- 1.2.8. to 'contract' includes any relevant contract however described therein;
- 1.2.9. to any statute, statutory provision or other instrument, is a reference to it as from time to time amended, extended, consolidated or re-enacted and includes all instruments, orders or regulations made under, or deriving validity from such instrument and any instrument having a similar purpose in the relevant part of the United Kingdom.
- 1.3. Any undertaking by a Party not to do an act or thing shall be deemed to include an undertaking not to permit or suffer such act or thing to be done by another person.
- 1.4. The headings and indexes in this Contract are inserted for convenience only and shall be ignored in construing the Contract.

2. TERMS AND CONDITIONS

- 2.1. Subject to the operation of law, these AHDB Terms read with the other provisions of this Contract as any such may be amended shall govern the Contract to the entire exclusion of all other terms or conditions.
 - 2.1.1. Any amendment to this Contract shall have effect only in relation to this Contract and only if agreed in Writing.
 - 2.1.2. These AHDB Terms as they may be amended from time to time apply to all purchases by AHDB of Goods and Services from the Supplier.
 - 2.1.3. The terms of this Contract shall take precedence over all other terms relating to the undertaking of the Project, including those in any Purchase Order. The Parties agree that any terms in any Purchase Order inconsistent with the terms of this Contract will not amend the terms of the Contract.

3. UNDERTAKINGS BY THE SUPPLIER

- 3.1. The Supplier undertakes that:
 - 3.1.1. it has taken reasonable care in developing and/or assessing the Specification, and believes after due consideration that it together with any of its agents and sub-contractors can fully carry out the necessary work;
 - 3.1.2. to the best of its knowledge and belief, the following shall not constitute an infringement of the Intellectual Property Rights of any third party:
 - (a) the supply of the Goods and Services;
 - (b) appropriate use by AHDB of the Goods and Services, which shall take into due consideration any relevant advice on such use that the Supplier may provide.
 - 3.1.3. it shall take reasonable steps to ensure that there is no conflict of interest as would be likely to prejudice its impartiality and objectivity in supplying the Goods and Services and that upon becoming aware of any such conflict of interest it shall promptly (and in any case within seven days) inform AHDB in Writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as AHDB may reasonably require.
 - 3.1.4. the Goods and the Services shall:
 - (a) not be changed without the prior consent in Writing of AHDB; and
 - (b) conform to the Specification, which the Supplier confirms to be accurate, complete in all material respects and not misleading.
 - 3.1.5. the Goods shall:
 - (a) be of the best available design, of the best quality and workmanship subject to the Specification and in any case without fault or defect (including Latent Defect);
 - (b) conform with all Laws applicable to such Goods as regards the design, manufacture, quality, packaging, storage, transportation, delivery, labelling, health, safety and environmental standards and use of such Goods which are in force at the time of supply;
 - (c) be complete and fully operational and shall be delivered within the agreed contract price with all parts (including all parts that are not specified in the Specification but which are required for proper operation and also the usual guards, safety devices, special tools etc.);

- (d) be accompanied by all appropriate information, warnings, instructions and documentation in relation to the safe use, handling, storing, operation, consuming, transportation and disposal of any Goods or parts or materials including paper and/or electronic operation manuals or those available via functioning web link, in particular in relation to hazardous materials which will be clearly identified to AHDB;
 - (e) be free from chlorofluorocarbons, asbestos, dioxins, halons and radiation above natural background levels and any other similarly hazardous substances unless specifically agreed by AHDB; and
 - (f) comply with any applicable national and international quality assurance standards from time to time published under which the Supplier is approved; and/or as reasonably requested by AHDB.
- 3.1.6. the Services shall be performed with all reasonable care, skill and due diligence and in accordance with best professional, technical and scientific knowledge and practice; legislative requirements; generally recognised commercial practices and standards for similar services; and any agreed service levels.
- 3.1.7. it shall at all times during the duration of this Contract and at its own expense:
- (a) maintain all licences and consents necessary for the performance of its obligations under the Contract;
 - (b) adopt safe working practices and shall not in the performance of the Contract in any manner endanger the safety of or unlawfully or unreasonably interfere with the convenience of any other person, including employees and/or contractors of AHDB;
 - (c) ensure that, in performing its obligations under the Contract, it does not cause any disturbance or damage to the operations and property at the relevant site;
 - (d) comply with AHDB's health and safety policies in relation to any work carried out at a site under the control of AHDB;
 - (e) assist AHDB (and any person nominated by AHDB) in the investigation of any accident or incident or the resolution of any dispute, which assistance shall include, but not be limited to, making personnel available for interview, providing access to documents and records and providing information reasonably requested by AHDB;
 - (f) notify AHDB as soon as it becomes aware of any breach of laws or any health and safety incident which arises in relation to the Goods or Services (which notification shall not release the Supplier from any liability and/or obligations in respect of such breach, hazard or issue); and
 - (g) co-operate with AHDB in all matters relating to the Goods and Services.
- 3.2. The undertakings given under this Condition 3 shall survive any performance, acceptance or payment pursuant to, or any expiry or termination of, the Contract and shall be extended to any repaired or replacement Goods or substituted or remedial Services provided by the Supplier.

4. PERSONNEL

- 4.1. The Supplier shall:
- 4.1.1. deploy sufficient personnel of appropriate qualifications, competence and experience to supply the Goods and Services to time and ensure that they are properly managed and supervised;
 - 4.1.2. carry out and ensure that its employees, agents and sub-contractors supply the Goods and Services with reasonable skill, care and due diligence, in accordance with best professional, technical and scientific knowledge and practice, any legislative requirements and applying an appropriate level of integrity.
 - 4.1.3. take reasonable steps to avoid any changes of Key Personnel, but where the Supplier considers it necessary to do so or such Key Personnel withdraw from or become unavailable for any reason, the Supplier shall promptly inform AHDB and shall take appropriate steps to replace the Key Personnel.
- 4.2. All persons employed by the Supplier in the supply of the Goods and Services shall be its responsibility as employer. The Supplier shall be liable to AHDB for any loss AHDB may suffer arising out of the relationship of the Supplier with any person employed by it or its sub-contractors except (i) where this arises as a direct result of any breach of contract, breach of statutory duty and/or negligence on the part of AHDB or (ii) where the Supplier could not reasonably have prevented the act or failure to act leading to the loss.
- 4.3. The Supplier shall on request and subject to any requirements or limitations of the DPL, give AHDB such particulars as it may reasonably require of all persons who are or may be at any time employed in the supply of the Goods and Services.

5. TUPE

- 5.1. The Supplier shall indemnify AHDB for itself and any future provider of services to AHDB against all and any costs, expenses, liabilities, damages and losses arising out of any claim, action, demand or proceeding by any Supplier personnel which arises or is alleged to arise by virtue of the operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 in connection with the termination of the provision of any of the Services (including without limitation in relation to any dismissal or alleged dismissal of any individual employed or engaged or formerly employed or engaged in the provision of the Services by the Supplier).
- 5.2. The Supplier shall not:
- (a) at any time during the Contract, including any extension, move any staff into the undertaking or relevant part of the undertaking, who do not meet the standards of skill and experience or who are in excess of the number required for the purposes of the Contract; or
 - (b) make any substantial change in the terms and conditions of employment of any staff engaged in supplying the Goods and Services that is inconsistent with the Supplier's established employment and remuneration policies.
- 5.2.1. Where, in the reasonable opinion of AHDB, any change or proposed change in the staff employed in the undertaking or relevant part of the undertaking, or any change in the terms and conditions of employment of such staff would be a material breach of Condition 5.2, AHDB shall have the right:
- (a) to make representations to the Supplier against the change or proposed change;
 - (b) to give notice to the Supplier in accordance with Condition 7 requiring it to remedy the breach within 30 days; and

- (c) if the Supplier has not remedied the breach by the end of the period of 30 days to the satisfaction of AHDB acting reasonably, to terminate the Contract in accordance with Condition 14.4.
- 5.2.2. If, after due consultation with the Supplier, AHDB reasonably requires and gives the Supplier notice in accordance with Condition 7 that any person is to be removed from involvement in the supply of the Goods and Services, the Supplier shall take reasonable steps to comply with such notice.
- 5.3. Where, in the reasonable opinion of AHDB, the Transfer of Undertakings (Protection of Employment) Regulations 2006 are likely to apply on the termination or expiry of the Contract, the Supplier shall promptly provide on request accurate information relating to the staff who would be transferred under the same terms of employment under those Regulations, including in particular:
 - (a) the number of staff who would be transferred, but with no obligation on the Supplier to specify their names;
 - (b) in respect of each of those members of staff their age, sex, salary, length of service, hours of work, overtime hours and rates, any other factors affecting redundancy entitlement and any outstanding claims arising from their employment;
 - (c) the general terms and conditions applicable to those members of staff, including probationary periods, retirement age, periods of notice, current pay agreements, working hours, entitlement to annual leave, sick leave, maternity and special leave, terms of mobility, any loan or leasing schemes, any relevant collective agreements, facility time arrangements and additional employment benefits.
- 5.3.1. The Supplier shall indemnify AHDB against any claim made against AHDB at any time by any person in respect of any liability incurred by AHDB arising from any deficiency or inaccuracy in information which the Supplier is required to provide under Condition 5.3.
- 5.3.2. AHDB shall take reasonable precautions to ensure that the information referred to in Condition 5.3 is given only to suppliers who have qualified to tender for the future provision of the supply of the Goods and Services and similar goods and services.
- 5.3.3. AHDB shall require any supplier to whom such information is given:
 - (a) to treat the information in confidence,
 - (b) not to communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by AHDB, and
 - (c) not to use it for any other purpose.

6. CONTRACTED WORKERS

- 6.1. This Condition 6 applies in relation to and only in relation to a person satisfying all of the following criteria (a 'Contracted Worker'):
 - 6.1.1. The person must be contracted to undertake Research for or supply goods or services to AHDB for six months or more, directly by this Contract or consequent upon an obligation in this Contract upon the Supplier;
 - 6.1.2. The person must not be on the payroll of AHDB or Meat and Livestock Commercial Services Limited or any UK government department (including a devolved administration) or any agency thereof;

- 6.1.3. The person must be or have been liable to pay UK income tax and/or national insurance contributions at the appropriate time;
- 6.1.4. The rate of payment (calculated based on a 7.5 hours working day, and excluding reimbursement of expenses necessarily incurred and VAT) for the provision of such services must be £220 or more per day.
- 6.2. Insofar as the Contracted Worker is liable to be taxed in the UK in respect of consideration received in relation to this Contract, he shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
- 6.3. Insofar as the Contracted Worker is liable to National Insurance Contributions (NICs) in respect of consideration received in relation to this Contract, he shall at all times comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
- 6.4. AHDB may, at any time during the term of this Contract, request the Contracted Worker to provide within a specified period information which demonstrates how he complies with Conditions 6.2 and 6.3 above or why those Conditions do not apply to him. For the avoidance of doubt, this does not oblige the Contracted Worker to disclose the amount of income tax or NICs paid.
- 6.4.1. AHDB may supply any information which it receives under this Condition 6.4 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 6.5. Insofar as the Supplier is a Contracted Worker or the Supplier contracts directly or through any other person with any Contracted Worker for the supply of Research or goods or services in relation to the satisfaction of its obligations under this Contract, this Condition 6 shall apply in relation to each Contracted Worker.
- 6.5.1. The Supplier shall ensure that such contracts:
 - (a) contain obligations and other provisions equivalent to those in this Condition 6 so that AHDB is able to take action in relation to each Contracted Worker; and
 - (b) ensure that any information provided by a Contracted Worker to any other person in relation to the operation of this Condition 6 may lawfully be provided to AHDB and be provided by AHDB to the Commissioners of Her Majesty's Revenue and Customs.
- 6.6. Subject to Condition 14.12, AHDB may terminate this Contract if:
 - (a) in the case of a request mentioned in Condition 6.4, the Contracted Worker:
 - (i) fails to provide information in response to the request within any specified period or, if no period is specified, within a reasonable time, or
 - (ii) provides information which is inadequate to demonstrate either how he complies with Conditions 6.2 and 6.3 above or why those Conditions do not apply to him; or
 - (b) AHDB receives information which demonstrates that, at any time when Conditions 6.2 and 6.3 apply to the Contracted Worker, he is not complying with those Conditions.
- 6.6.1. Amendments to the Contract under Condition 14.12 may exclude the Contracted Worker but AHDB shall have no liability to the Supplier in relation to any liability thereby falling upon the Supplier.

7. CONTACTS AND COMMUNICATION

- 7.1. AHDB and the Supplier shall each nominate a Primary Contact as its principal point of contact.
 - 7.1.1. The Supplier shall nominate any Key Personnel.
 - 7.1.2. Any such nomination shall be in Writing to the other Party.
- 7.2. The Primary Contacts and the Key Personnel shall communicate as necessary to facilitate the performance of this Contract.
- 7.3. Contact and communication information relating to each Party is set out or deemed to be set out in Schedule C.
 - 7.3.1. Unless otherwise agreed, any communication between the Parties concerning the Contract shall be in English.

Notices

- 7.4. Any notice required to be given shall:
 - 7.4.1. be in permanent written form and signed by or on behalf of a duly authorised officer of the Party giving notice;
 - 7.4.2. be deemed duly served if:
 - (a) given to the Representative of the Party to be served with the notice (the 'receiving Party'), or
 - (b) left at, or sent by pre-paid first class post (or by air mail if one Party is outside the UK) or by facsimile transmission to, the address of the receiving Party specified in Schedule C.
 - 7.4.3. be deemed to have been received by the receiving Party:
 - (a) on the first Working Day after the day on which it is given to the Representative of, or left at the address of, that Party;
 - (b) on the third Working Day after the day on which it is posted save that if the notice is sent by air mail, it shall be deemed to have been so received on the fifth Working Day after the day on which it is posted;
 - (c) on the first Working Day after the day on which a facsimile is transmitted.
- 7.5. In proving the serving and receipt of a notice it shall be sufficient to prove that:
 - (a) the notice was given or left in accordance with Condition 7.4.2; or
 - (b) the envelope containing the notice was correctly addressed and was posted; or
 - (c) the facsimile was correctly addressed and was confirmed by the recipient equipment as having been received with all pages successfully transmitted.

8. OPERATION OF THE CONTRACT

- 8.1. The Supplier shall properly manage and monitor the supply of the Goods and Services and inform AHDB in Writing without undue delay if any aspect of the Contract is not being or is unable to be performed.
 - 8.1.1. The Supplier shall provide all the facilities necessary to supply the Goods and Services.
 - 8.1.2. Any materials or processes used in connection with the supply of the Goods and Services shall be in accordance with standards set out in the Contract.

- 8.2. The Supplier shall supply the Goods and Services to AHDB in accordance with the Specification and ensure that its employees, agents and sub-contractors act with reasonable skill, care and diligence.
- 8.3. The Supplier shall take reasonable steps to follow best professional or good industry practice and ensure compliance with all applicable laws, codes of practice, guidelines and any Standards set out in the Specification, by itself and its servants, employees, agents and sub-contractors.
- 8.4. The Supplier confirms that:
 - 8.4.1. it will comply with best practice and relevant provisions, whether statutory or otherwise, relating to health and safety at work;
 - 8.4.2. it will comply with the DPL;
 - 8.4.3. it will not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010;
 - 8.4.4. it will comply with the Bribery Act.
- 8.5. The Supplier confirms that in entering into the Contract it has not:
 - 8.5.1. colluded with any competitor in formulating its offer to supply the Goods and Services except insofar as any such competitor is a named participant in a consortium in relation to supply of the Goods and Services of which the Supplier is also a participant;
 - 8.5.2. canvassed any person associated with AHDB or otherwise sought improperly to improve its competitive position in relation to this Contract;
 - 8.5.3. done or omitted to do anything that would result in a breach of the Bribery Act 2010.
- 8.6. Except to the extent permitted in this Contract, the Supplier shall treat all Confidential Information belonging to AHDB as confidential and shall not disclose any such Confidential Information to any other person without the prior consent in Writing of AHDB, except under an obligation of confidentiality upon such persons and to such extent as may be necessary for the performance of the Supplier's obligations under the Contract.
 - 8.6.1. Each Party may discuss the Contract and its performance with any adviser or consultant subject to appropriate conditions of confidentiality.
- 8.7. The Supplier shall promptly and in any case not later than one week of its becoming aware of any circumstances likely to adversely affect the supply of the Goods and Services bring these matters to the attention of AHDB in Writing and the Primary Contacts shall reasonably agree any consequential action that shall be taken.
- 8.8. Each Party shall, subject to being informed reasonably in advance, attend all meetings specified in the Contract or otherwise reasonably arranged by either Party for the discussion of matters concerned with the supply of the Goods and Services.
- 8.9. At any time prior to delivery of the Goods to AHDB or completion of the Services AHDB (or its nominee) shall have the right to inspect and test the Goods or inspect the work being carried out in performance of the Services. If at the date of the inspection the Goods are located or the Services are being performed at the premises of the Supplier or its associated companies or sub-contractors, the Supplier shall procure that AHDB or its nominees have access on reasonable notice and shall ensure that the inspectors shall receive such information and

assistance as they reasonably request in relation to their inspection or testing of the Goods or Services.

- 8.9.1. If the results of such inspection or testing cause AHDB to be of the opinion (acting reasonably) that the Goods and/or Services do not conform or are unlikely to conform to the Specification, or that the Goods and/or Services may not be delivered to time, AHDB may at its option:
- (a) inform the Supplier in Writing, following which the Supplier shall immediately take such action as is necessary to ensure conformity or timely delivery as the case may be;
 - (b) reject the Goods or Services; or
 - (c) require and witness further testing and inspection.
- 8.9.2. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and the Services and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.
- 8.10. AHDB is responsible for the accuracy and completeness of all information and data that is provided to the Supplier. The Supplier will not be liable for any errors, deficiencies or omissions in any Services arising from any inaccurate or incomplete information provided by AHDB. Unless agreed in writing with AHDB, the Supplier will not verify that the data or information provided to it for the purpose of the provision of the Services is true, accurate or complete.
- 8.11. To the extent that, and only when, the Supplier provides to AHDB any investment or insurance services which are covered by the Financial Services and Markets Act 2000 and/or the Financial Conduct Authority, the additional terms set out from time to time in the Supplier's documents (which are prepared in accordance with FCA requirements) 'Terms of Business for the provision of investment services' and/or 'Terms of Business for the provision of insurance services' will form part of this Contract. The Supplier will provide a copy of the relevant document(s) and of any changes to AHDB separately. Should any of the provisions of the aforementioned 'Terms of Business' document(s) and the terms of this Contract conflict, the former will prevail in respect of investment or insurance services.
- 8.12. All Deliverables the Supplier provides to AHDB are provided solely for AHDB's benefit. They are not to be disclosed to any third party other than AHDB's legal advisers on a strictly need to know basis and who are bound by confidentiality obligations at least as restrictive as those contained in this Contract without the Supplier's prior written consent. If the Supplier provides its consent to such disclosure, it may stipulate terms regarding such provision or require the third party to enter into a direct contractual relationship with the Supplier. AHDB will reimburse the Supplier in respect of any loss, of whatever kind and however incurred, as a result of AHDB's breach of this obligation. Any use of, or reliance upon, any reports, letters, information or advice the Supplier provide to AHDB during the Contract by any third party will be at their exclusive risk.

9. SUB-CONTRACTING

- 9.1. Without prejudice to the provisions of Annex 2, where a Supplier enters into a Sub-Contract for the purpose of performing its obligations under the Contract, it shall ensure that provisions are included *mutatis mutandis* in the Sub-Contract which:
- (a) have the same effect as Conditions 11.3, 11.3.1 and 11.3.2; and

- (b) require the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect *mutatis mutandis* as Conditions 11.3, 11.3.1 and 11.3.2.

In this Condition 9.1, 'Sub-Contract' means a contract between two or more suppliers, at any stage of remoteness from AHDB in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

- 9.2. The Supplier shall ensure that any sub-contractor complies with the terms and conditions of this Contract insofar as they are applicable and shall provide AHDB on request with a copy of any sub-contract.
- 9.2.1. Where the Supplier becomes liable to pay interest payments to a sub-contractor, AHDB will not reimburse those costs unless they are incurred due to the negligence or default of AHDB.
- 9.3. NOT USED.
- 9.3.1. Any sub-contract shall not relieve the Supplier of its obligations under the Contract and the Supplier shall remain liable to AHDB for any performance or non-performance of such obligations.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1. Neither party shall obtain any right or interest in the Intellectual Property Rights of the other except as set out in this Contract.
- 10.2. The Supplier will retain all ownership, title, copyright and other Intellectual Property Rights in all materials developed, designed or created by the Supplier before or during the Services, including without limitation in all methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience and any graphic or digitized representations. To the extent any material forming part of the Services incorporates any Intellectual Property Rights, the Supplier hereby grants AHDB a non-exclusive, perpetual, non-transferable licence to use such material solely for the purposes of enjoying the benefit of the Services for its internal business purposes in accordance with the terms of this Contract.
- 10.3. NOT USED.
- 10.4. If a claim is made that the possession or use by AHDB of any Goods or Services supplied under this Contract infringes the Intellectual Property Rights of a third party, or in the Supplier's reasonable opinion such a claim is likely to be made, the Supplier shall promptly and at its cost either:
 - 10.4.1. obtain for AHDB the right to continue using the materials which were the subject of the claim; or
 - 10.4.2. modify or replace the infringing part of the materials so as to avoid the infringement or alleged infringement but in such a way that it complies with the representations and warranties in this Contract.
- 10.5. If the Supplier becomes aware that any person alleges that any Intellectual Property Rights owned by or to be vested in AHDB are invalid or that use of such Intellectual Property Rights infringes any Intellectual Property Rights of another party then it shall as soon as reasonably practicable give AHDB particulars thereof in Writing and shall make no comment or admission to any third party in respect thereof.
- 10.6. All AHDB's Intellectual Property Rights and all materials, products, samples, documents and information provided by AHDB to the Supplier

(including copyright therein) shall remain the property of AHDB. Their use by the Supplier shall be allowed only within the limits of the purpose of this Contract or another written contract between the Parties and AHDB hereby grants the Supplier a non-exclusive, royalty-free licence to use its Intellectual Property Rights for such purpose.

10.7. This Contract shall not affect the ownership of any Intellectual Property Rights in existence before the Commencement Date.

10.7.1. NOT USED.

11. PAYMENT

11.1. AHDB will not reimburse any increase in the Supplier's costs (including increases in pay rates, national insurance and other employment costs) unless agreed in writing prior to the Supplier incurring such an increase.

11.2. All payments shall be paid to the Supplier, which shall hold in trust for AHDB any monies due therefrom to any other person until they are received by that person. The Supplier shall comply with instructions from AHDB in Writing to withhold part or all of any such payment to such a person and AHDB shall reimburse the Supplier for any damages awarded judicially against the Supplier consequent upon the Supplier's compliance with any such instructions.

11.3. AHDB shall pay all undisputed amounts within 30 days of the day when it has determined that a received invoice is valid and undisputed (the 'Due Date'). Such determination shall include establishing that it is proper (as described in Schedule B). Time for payment shall not be of the essence of the Contract.

11.3.1. AHDB will consider and verify invoices in a timely manner.

11.3.2. If AHDB fails to comply with paragraph 11.3.1 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of Condition 11.3 after a reasonable time has passed, taking into consideration all relevant circumstances.

11.3.3. If any sum due under the Contract is not paid within 30 days of the Due Date then, without prejudice to the Parties' other rights under the Contract, that sum shall bear simple interest from the Due Date until payment is made in full, both before and after any judgment, at 4 per cent per annum over the official dealing rate in force on the day on which such interest starts to run, where the official dealing rate is the rate announced from time to time by the Monetary Policy Committee of the Bank of England and for the time being in force as the official dealing rate.

11.3.4. NOT USED.

11.3.5. In the event that an agreed milestone is not achieved or the final claim is not made as agreed, AHDB reserves the right to withhold all or part of the relevant monies otherwise due to the Supplier.

11.3.6. AHDB reserves the right to audit any payment for which reimbursement is claimed and the Supplier agrees to co-operate fully in relation to any such audit.

11.4. Notwithstanding any other provision in this Contract and without prejudice to its other rights and remedies, no part of the final scheduled payment shall be due from or payable by AHDB until the performance of the Contract by the Supplier has been completed to AHDB's satisfaction acting reasonably.

- 11.4.1. In the event that no final payment is scheduled, such final scheduled payment shall be deemed to be 20% of the total payment due under this Contract if performed in full.
- 11.4.2. In the event that the Supplier fails to complete such performance on or before the Completion Date through no fault of AHDB:
- (a) the Parties shall agree a date and the performance shall be completed no later than such date;
 - (b) without prejudice to any other rights and remedies available to AHDB, AHDB shall be entitled to receive from the Supplier an amount equal to 10% of the total sum payable by AHDB to the Supplier under the Contract, such payment being a debt due from the Supplier to AHDB and representing the reasonable estimate by the Parties of the losses or damages likely to arise to or be incurred by AHDB as a result of such breach, and not by way of a penalty or similar charge; and
 - (c) the Supplier shall pay such payment to AHDB within 30 days of receiving a proper invoice from AHDB.
- 11.5. Without prejudice to any other right or remedy, AHDB shall have the right to set off any amount owed by the Supplier to AHDB for any reason including any overpayment by AHDB to the Supplier against any amount payable by AHDB to the Supplier under the Contract or any other contract.

12. LIABILITY

- 12.1. Neither Party shall be responsible to the other Party (including any person forming part of the Supplier) for any special, exemplary, indirect or consequential loss or damage, loss of profit, loss of revenue or anticipated savings, loss of business opportunity or loss of goodwill arising under or pursuant to this Contract, whether arising from negligence, breach of contract or otherwise, whether or not that Party has been advised of the possibility of, should have known of, or could reasonably have prevented, such loss or damage.
- 12.2. The Supplier shall indemnify AHDB, its employees, agents and contractors from and against liability for:
- 12.3. fines arising from a breach of Data Protection Legislation; and
- 12.4. NOT USED.
- 12.5. Each Party shall, with effect from the Commencement Date for such period as necessary to enable the Supplier to comply with its obligations under Condition 12, take out and maintain (and shall require any sub-contractor to take out and maintain) with a reputable insurance company an appropriate level of insurance covering appropriate risks.
- 12.5.1. The insuring Party shall responsibly and reasonably determine the appropriateness of the level of insurance and risks to be covered and shall take into consideration any views reasonably expressed by the other Party. That other Party shall not unreasonably refuse to assist the insuring Party when it is making such determination. Failure to insure adequately shall not relieve a Party of its liability to the other Party.
- 12.5.2. Satisfactory evidence of the level of insurance and the payment of premiums in relation to the policy or policies of insurance referred to in Condition 12.5 shall be shown by the insuring Party to the other Party on request.
- 12.5.3. No Party to the Contract shall take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim

under any insurance policy in which that Party is an insured, a co-insured or additional insured person.

12.5.4. NOT USED.

12.6. In relation to any Supplier that is an Academic Institution (or is deemed to be such by this Contract), the following shall not apply:

- (a) any requirement for an indemnity and any consequential requirement for insurance and evidence thereof;
- (b) Condition 11.5.

For the avoidance of doubt, such non-application shall not relieve the Supplier of any liability to AHDB.

12.7. Neither Party shall be responsible for any failure to perform its obligations hereunder due to an event of force majeure, including any circumstances beyond its reasonable control, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either Party's workforce).

12.7.1. In the case of an event of force majeure, the Parties shall seek to minimise any adverse effect on the Contract, including adjusting milestones where appropriate

12.7.2. If an event of force majeure delays the supply of any Goods or Services by more than thirty days and this event could reasonably be envisaged to jeopardise the interests of a Party or the Contract, the Parties shall consider and agree on appropriate action including whether the Contract and its performance should be amended, postponed or terminated and subject to the agreement of AHDB shall take appropriate action.

13. DELIVERY, ACCEPTANCE AND REJECTION

14. The Supplier shall provide AHDB with copies of records evidencing the Supplier's correct invoicing of the Services at AHDB's reasonable request. **TERMINATION**

14.1. This Contract may be terminated by agreement in Writing between the Parties at any time.

14.2. Where AHDB is reasonably of the opinion that the Supplier has a significant conflict of interest relating to the Contract, subject to Condition 14.12 AHDB may terminate the Contract. This Condition shall not apply if any such conflict of interest is capable of being avoided or removed and the Supplier promptly and successfully takes steps at its expense to avoid or remove the conflict.

14.3. Where in the reasonable opinion of AHDB the Supplier has failed to:

- (a) progress the supply of the Goods and Services in accordance with the Specification unless otherwise reasonably agreed between AHDB and the Supplier in Writing, including any agreement under Condition **Error! Reference source not found.**; or
- (b) otherwise fulfil its obligations under this Contract,

AHDB may give the Supplier notice in accordance with Condition 7 specifying the way in which its performance falls short of the requirements of the Contract, or is otherwise unsatisfactory. Such notice may:

- (a) direct the Supplier to remedy the fault at the Supplier's expense within such time as may be reasonably specified by AHDB; and/or

- (b) withhold or reduce payments to the Supplier, in such amount as AHDB reasonably deems appropriate in the circumstances.
- 14.3.1. In relation to any significant failure described in Condition 14.3:
- (a) If the failure is not reasonably remediable, AHDB may treat the failure as a material breach of the Contract.
- (b) If the failure is reasonably remediable and the Supplier fails to remedy it reasonably promptly or in accordance with any direction given by notice under that Condition, AHDB may then treat the failure as a material breach of the Contract.
- 14.4. In the event that the Supplier has committed a material breach of the Contract, subject to Condition 14.12 AHDB may terminate the Contract. This Condition shall not apply if such breach is capable of remedy and the Supplier has remedied such breach at its own expense within 30 days (or such other period as may reasonably be agreed) of being required by AHDB in Writing to do so.
- 14.5. If any distress, execution or other process is levied upon any of the assets of the Supplier intended to be used for the purposes of the supply of the Goods and Services, subject to Condition 14.12 AHDB may terminate the Contract. This Condition shall not apply if the Supplier is able to properly undertake such supply by other means at no additional cost to AHDB.
- 14.6. If the Supplier being an individual dies or is judged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983, AHDB may terminate the Contract.
- 14.7. The Supplier shall promptly inform AHDB in Writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or change of status and of the completion of any such matter. For the purposes of this Condition 14.7, 'control' has the meaning set out in section 1124 of the Corporation Tax Act 2010.
- 14.7.1. AHDB shall respect any reasonable request by the Supplier to treat information provided under Condition 14.7 as Confidential Information for an appropriate specified period.
- 14.7.2. Upon completion of any of the matters described in Condition 14.7, AHDB shall consider in the context of the Public Contracts Regulations 2015 whether the continuation of the Contract with or without reasonable amendment is unlawful and shall take appropriate action which subject to Condition 14.12 may include terminating the Contract.
- 14.8. The Supplier shall inform AHDB in Writing immediately upon the occurrence of any of the following events:
- (a) being an individual:
- is the subject of a bankruptcy order, or
 - has made a composition or arrangement with his creditors;
- (b) being a company:
- goes into compulsory winding up;
 - passes a resolution for voluntary winding up;
 - suffers an administrator, administrative receiver or receiver and manager to be appointed or to take possession over the whole or any part of its assets;

- has entered into a voluntary arrangement with its creditors under Part I of the Insolvency Act 1986;
 - has proposed or entered into any scheme of arrangement or composition with its creditors under Part 26 of the Companies Act 2006; or
 - has been dissolved;
- (c) being a partnership or unregistered company:
- goes into compulsory winding up;
 - is dissolved;
 - suffers an administrator or receiver and manager to be appointed over the whole or any part of its assets;
 - has entered into a composition or voluntary arrangement with its creditors; or
 - any individual member of the partnership falls within Condition 14.8(a);
- (d) or is in any case affected by any similar occurrence to any of the above in any jurisdiction,

and subject to Condition 14.12 AHDB may terminate the Contract.

14.9. If:

- (a) the Supplier has failed to make satisfactory progress with the supply of the Goods and Services and AHDB reasonably believes that such supply is unlikely to be completed by the Completion Date;
- (b) AHDB's powers to impose a levy upon any Industry relevant to the Goods and Services are reduced or discontinued; or

subject to Condition 14.12 AHDB may terminate the Contract by giving the Supplier not less than 30 days' notice.

14.10. AHDB shall have the right at any time and for any reason to terminate the Contract by giving not less than 90 days' notice, whereupon all work on the Contract shall be discontinued.

14.11. Subject to Condition 14.12 and pursuant to regulation 73 of the Public Contracts Regulations 2015, AHDB may terminate the contract by giving the Supplier not less than 30 days' notice if:

- (a) the contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of those Regulations;
- (b) the Supplier has, at the time of contract award, been in one of the situations referred to in regulation 57(1), including as a result of the application of regulation 57(2) of those Regulations, and should therefore have been excluded from the procurement procedure; or
- (c) the contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty of the Functioning of the European Union.

14.12. Before giving notice of termination under Conditions 6.6, **Error! Reference source not found.**, 14.2, 14.4, 14.5, 14.7.2, 14.8, 14.9, 14.10 or 14.11, AHDB

shall consult the Supplier and the Parties shall promptly consider whether any part of the supply of the Goods and Services could reasonably and usefully continue to be undertaken as an alternative to termination and if so whether the Contract should consequently be amended. If AHDB agrees to such continuation, notice of termination shall not be given and appropriate amendments shall be made to the Contract, which may include amendments to the Specification and the payments due.

- 14.12.1. In the event that no agreement is reached to continue the supply of any or all of the Goods and Services within 10 days of AHDB consulting the Supplier under Condition 14.12, AHDB may terminate the Contract.
- 14.13. Notice of termination of this Contract shall be given by AHDB to the Supplier in accordance with Condition 7.
- 14.14. AHDB may, during any notice period direct the Supplier:
 - (a) to refrain from performing the Contract or any part thereof;
 - (b) to cease work immediately; or
 - (c) to complete, in accordance with this Contract, any part of the supply of Goods or Services, which shall be paid at the agreed price or, where no agreement exists as to price, a fair and reasonable price, and such of the Contract as is relevant to the completion of such part shall continue to have effect until such part is completed or discontinued.
- 14.15. Termination of this Contract by AHDB may (unless otherwise specified) have immediate effect.
- 14.16. Except as expressly provided in this Contract, termination of the Contract shall not affect:
 - (a) any right, obligation or liability of any Party which has accrued at the date of termination;
 - (b) any provision of this Contract which is expressly or impliedly intended to continue to have effect after the Contract has been terminated.
- 14.17. If the Contract is terminated by AHDB otherwise than as a consequence of a material breach by the Supplier, the Supplier shall be entitled to claim from AHDB reimbursement of expenditure incurred or irrevocably committed by the Supplier necessarily and properly in relation to the performance of this Contract including expenditure unavoidably incurred as a result of such termination but excluding loss of profits and any compensation or consequential or indirect loss. The liability of AHDB under this Condition together with any other payments made or to be made to the Supplier shall not exceed the total sum payable for the supply of the Goods and Services as set out in Schedule B.
 - 14.17.1. Any such reimbursement shall be conditional upon the Supplier complying with a duty to mitigate such costs as far as is reasonably practicable.
- 14.18. In the event of termination of this Contract as a consequence of a material breach by the Supplier:
 - (a) AHDB shall not be under any obligation to make any payment to the Supplier for such period as is reasonable for AHDB to assess the loss and/or damage suffered as a result of the termination. After such period and discussion with the Supplier, AHDB may recover the amount of such loss and/or damage including by set off against any sums due to the Supplier in relation to this Contract;

- (b) the Supplier shall promptly refund to AHDB any funds paid by AHDB to the Supplier in accordance with this Contract and not in the reasonable opinion of AHDB properly spent or properly committed for the purposes of the Contract;
 - (c) all rights granted to AHDB by the Supplier including any licence to use any Intellectual Property Rights in relation to the Goods and Services shall reasonably continue until the supply of the Goods and Services has been discontinued or completed in relation to the Goods and Services or similar goods and services with a replacement supplier;
 - (d) all rights acquired during the period of the Contract by the Supplier to use any Intellectual Property Rights provided by AHDB shall cease upon termination;
- 14.19. In the case of termination of this Contract pursuant to Conditions 5.2.1(c), 6.6, **Error! Reference source not found.**, 14.2, 14.4, 14.5, 14.6, 14.7.2, 14.8, 14.9 or 14.10, without prejudice to any other rights which it may have AHDB reserves the right to:
- 14.19.1. refuse to accept any subsequent delivery of the Goods or Services which the Supplier attempts to make;
 - 14.19.2. purchase from a third party Goods and Services of similar nature and scope to those that were to be supplied under this Contract;
 - 14.19.3. recover from the Supplier any excess cost incurred by AHDB over the price agreed in this Contract together with all charges and expenses arising from the purchase of such Goods or Services from the third party; and
 - 14.19.4. claim damages for any additional costs, loss or expenses incurred by AHDB which are in any way attributable to the Supplier's failure to perform the Contract.
- 14.20. Subject to Condition 14.20.1, to the extent that the Contract is declared wholly ineffective or otherwise invalid, void, voidable or unenforceable by any court, tribunal or administrative body of competent jurisdiction pursuant to law (including any law which implements or gives effect to the EU Remedies Directive [2007/66/EC]), the Contract shall terminate with immediate effect and Condition 14.17 shall apply. The Supplier acknowledges that, other than as set out in this Condition 14.20 (or Condition 14.20.1 if applicable), it shall be entitled to no other payment from AHDB in the event of any such termination.
- 14.20.1. Where a declaration of the type described in Condition 14.20 (a 'Declaration') is stayed or otherwise suspended pending an appeal by AHDB or for any other reason, the Contract shall continue in full force and effect for such period of stay or suspension (the 'Relevant Period'). If the Declaration is upheld at the end of the Relevant Period the Contract shall be deemed to have terminated on the date the original Declaration was made (or such other date as may be determined by the court, tribunal or administrative body of competent jurisdiction) and the provisions of Condition 14.20 shall apply with effect therefrom (provided that the amounts being reimbursed to the Supplier thereunder shall include those reasonably incurred by it in respect of work-in-progress or Services performed during the Relevant Period). If the Declaration is overturned at the end of the Relevant Period the Contract shall continue in full force and effect for the remainder of the Term. The Supplier agrees to provide all reasonable assistance to AHDB in connection with any Declaration or appeal against a Declaration and in mitigating the effect of such.
- 14.21. The Supplier shall co-operate fully with AHDB following the termination of the Contract as a consequence of its expiry or otherwise. This co-operation shall

extend to allowing full access to, and providing copies of, all documents, reports, summaries and any other information relating to the supply of the Goods and Services. Upon the termination of the Contract, the Supplier shall:

- (a) forthwith return to AHDB the originals and any copies of all documents and materials provided in relation to the Contract and destroy any electronic copies thereof, provided that the Supplier may retain a copy for *such minimum period of time as is necessary for* insurance purposes or in order to fulfil the conditions of its insurance policies, or to defend its work product;
- (b) transfer to AHDB, or any person designated by AHDB, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the supply of the Goods and Services;
- (c) permit AHDB to enter premises and recover any documents, equipment and materials which are the property of AHDB provided AHDB reasonably informs the Supplier in advance of its intention so to do,

so however that such documents, equipment and materials may be retained insofar as they are required by the Supplier for the purposes of another contract with AHDB.

- 14.21.1. If required, the Supplier will provide reasonable co-operation with any new service provider. Any handover services, the associated milestones and fees will be agreed in writing by the parties.

15. TRANSFER OF RIGHTS AND OBLIGATIONS

- 15.1. The Supplier shall not sub-contract, transfer, assign, charge, or otherwise dispose of the Contract or any part of it without the prior consent of AHDB in Writing, which may be conditional but shall not be unreasonably withheld, denied or delayed.

- 15.1.1. The Supplier shall ensure, if so requested by AHDB, that an assignee enters into a novation agreement with AHDB to perform the Contract as if the assignee were a Party to the Contract in lieu of the Supplier.

- 15.2. AHDB may at any time by giving 30 days' notice to the Supplier in accordance with Condition 7, transfer or assign all or any rights and/or obligations under the Contract.

16. FREEDOM OF INFORMATION AND DATA PROTECTION

- 16.1. The Parties acknowledge that, in order to be compliant with the Freedom of Information Act 2000, the Environmental Information Regulations 2004, or any other legislation governing access to information (the 'FOI Legislation'), there may be an obligation to provide information that relates to this Contract, which may include Confidential Information, on request to third parties.

- 16.1.1. In the event that either Party receives a request for information relating to the Contract falling within the scope of the FOI Legislation, that Party (the 'Disclosing Party') shall be entitled to disclose such information as is necessary to comply with the FOI Legislation. The Parties shall co-operate in order to enable the Disclosing Party to comply with its obligations under the FOI Legislation. Where Confidential Information relating to the Contract is exempt from disclosure, it shall not be disclosed without the agreement in Writing of the owning Party.

- 16.1.2. The Disclosing Party shall not be liable for any loss, damage, harm or other detriment suffered by the other Party arising from the disclosure of any information required by the FOI Legislation to be disclosed.

- 16.2. AHDB maintains a database of its contracts including all those likely to have a value of £25,000 or more. AHDB recognises the importance of transparency in its procurement and contracting, and subject to any confidentiality obligations the contents of these contracts will be made available to interested persons on request.
- 16.2.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOI Legislation, the content of this Contract is not Contractor's Confidential Information. The Disclosing Party shall be responsible for determining whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOI Legislation.
- (a) Notwithstanding any other term of this Contract, the Supplier hereby gives its consent for AHDB to provide or publish to the general public the Contract in whole or part, as it may be amended.
- (b) The Supplier shall assist and co-operate with AHDB to enable AHDB to provide or publish this Contract, including by identifying any matters which it considers to be confidential or otherwise exempt from disclosure under the FOI Legislation. AHDB will take any representation from the Supplier into fair and proper account.
- 16.3. The Supplier shall not publicise or permit any other person to publicise the procurement, award, existence or content of this Contract without the prior written permission of AHDB's Director of Communications and Legal Services, which may be conditional and which shall not be unreasonably denied, delayed or withheld.
- 16.3.1. For the avoidance of doubt, Condition 16.3 does not prevent:
- (a) The disclosure by any Party of this Contract or a draft thereof to a supplier or sub-contractor that is expected to act with the Supplier in relation to the supply of the Goods and Services so that it is aware of the terms under which the Supplier will contract with AHDB. Commercially sensitive matter may be redacted. Similar conditions to those imposed on the Supplier under Condition 16.3 shall be imposed on the recipient.
- (b) the disclosure of the AHDB Terms to any person.
- 16.4. The Parties shall comply with the obligations contained in Annex 2 in respect of data processing and the protection of personal data within the meaning of the DPL.
- 16.5. Insofar as the Supplier is subject to the FOI Legislation or is the data controller pursuant to the DPL, this Condition 16 and Annex 2 shall have mutual effect mutatis mutandis.

17. DISPUTE RESOLUTION

- 17.1. The Parties shall in good faith attempt to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.
- 17.1.1. If any such dispute is not resolved by such negotiation within 42 days from notification that a dispute exists or such longer period as may be agreed, including escalation to senior executives if appropriate, the Parties shall consider referring the matter to mediation in accordance with Conditions 17.2 and 17.3.
- 17.1.2. Each Party agrees to pay due consideration to Conditions 17.1 and 17.3 before commencing proceedings to settle a dispute relating to this Contract.

17.2. The procedure for mediation shall be as follows:

- 17.2.1. a neutral person ('the Mediator') shall be chosen by agreement between the Parties, alternatively, any Party may within 14 days from the date of the proposal to appoint a mediator, or within 14 days of notice to any Party that the chosen mediator is unable or unwilling to act, apply to the Centre for Dispute Resolution ('CEDR') to appoint a mediator;
 - 17.2.2. the Parties shall within 14 days of the appointment of the Mediator meet with him to agree a timetable for the exchange of all relevant and necessary information and the procedure to be adopted for the mediation. If appropriate, the Parties may at any stage seek from CEDR guidance on a suitable procedure;
 - 17.2.3. unless otherwise agreed, all negotiations and proceedings in the mediation connected with the dispute shall be conducted in strict confidence and shall be without prejudice to the rights of the Parties in any future proceedings;
 - 17.2.4. if the Parties reach agreement on the resolution of the dispute, that agreement shall be put in Writing and shall be binding upon the Parties;
 - 17.2.5. failing agreement, any Party may invite the Mediator to provide a non-binding but informative opinion in Writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the dispute without the prior consent of the Parties in Writing.
- 17.3. For a period of 60 days from the date of the appointment of the Mediator, or such other period as the Parties may agree, none of the Parties may commence any proceedings in relation to the matters referred to the Mediator.

18. GENERAL

- 18.1. Subject to any fraudulent misrepresentation, the Contract including any documents referred to herein and any properly made amendment sets out the entire agreement relating to the supply of the Goods and Services and supersedes any prior agreement, contract, understanding, proposal, statement or other communication relating to the Goods and Services whether oral or written.
- 18.1.1. In entering into this Contract, each Party acknowledges that it does not do so on the basis of and does not rely on any representation, warranty or other provision except as expressly provided in this Contract.
 - 18.1.2. No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement of an Order, specification, delivery note, invoice, proposal or similar document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.
- 18.2. Nothing in this Contract shall be taken as limiting or excluding AHDB's or the Supplier's rights or obligations pursuant to law.
- 18.3. In carrying out the supply of the Goods and Services, the Supplier shall be acting as principal and not as agent or employee of AHDB. Accordingly:
- 18.3.1. Nothing in this Contract shall be construed so as to create a partnership or joint venture between the Parties or have the effect of making any employee of any Party a servant of another Party;
 - 18.3.2. No Party shall act or describe itself as the agent of another Party nor shall it make or represent that it has authority to make any commitments on the other's behalf;

- 18.3.3. The Supplier shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent or employee of AHDB, and
- 18.3.4. Nothing in the Contract shall impose any liability of AHDB in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of AHDB to the Supplier that may arise by virtue of either a breach of the Contract or any negligence on the part of AHDB, its staff or agents.
- 18.4. The following requirements shall not apply as between AHDB and a Party who is part of the Crown and the Supplier shall not require any sub-contractor that is part of the Crown to comply with provisions similar to those requirements:
- (a) Conditions 3.1.2, 12.2, 12.5 (excluding the requirement in relation to sub-contractors) and 14 (to the extent that it relates to Condition 3.1.2);
 - (b) Any other requirement for an indemnity or insurance.
- 18.4.1. The provisions in Condition 18.4 shall apply *mutatis mutandis* in relation to a state department of a member state of the European Union, including any executive agency thereof.
- 18.4.2. For the avoidance of doubt the existence, continuation or size of any liability to AHDB shall not be affected by the operation of this Condition 18.4.
- 18.5. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be severed and the remaining provisions of the Contract shall continue in full force and effect.
- 18.6. Each right or remedy of AHDB under the Contract is without prejudice to any other right or remedy of AHDB whether under the Contract or not and is in addition to any conditions implied in favour of AHDB by Law.
- 18.7. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.
- 18.7.1. The delay, failure or neglect of any Party to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 18.7.2. No waiver shall be effective unless it is communicated in Writing.
- 18.8. The Supplier agrees to permit any competent authority to perform such checks as it may lawfully require for the purpose of establishing the compliance of AHDB with regulatory or contractual requirements.
- 18.9. This Contract does not give any person who is not a Party to it any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions. This does not affect any right of a third party which exists other than pursuant to that Act.
- 18.10. The Contract shall be governed by and construed in accordance with the law of England and Wales.
- 18.10.1. Without prejudice to Condition 17, each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

- The remainder of this page is intentionally blank -

Annex 2 – Data Protection Addendum

1. Processing of Data

- 1.1 AHDB takes a positive attitude towards data sharing providing it is appropriate, undertaken within the scope of the Data Protection Legislation ("DPL") and there are adequate and proportionate data security arrangements in place.
- 1.2 AHDB has agreed to provide the personal data described in Part 1 (the "Data") for the purpose specified therein ("Purpose") and the Data Protection Officer ("DPO") has authorised its release for the Purpose in accordance with this Agreement. All Data shall be transmitted securely in accordance with Part 1.
- 1.3 The Data may include confidential information about companies and/or individuals. These data subjects were informed at the time the Data was collected that AHDB might or would transfer it to other persons. The Supplier accepts that AHDB bears no legal responsibility for the accuracy or comprehensiveness of the Data supplied.
- 1.4 The Data provided under this Agreement may only be used for the Purpose and must not be published in any form.

2. Data Access, Supplier Personnel and Sub-contractors

- 2.1 The Data is to be shared with the Supplier solely for the Purpose on a strictly need to know basis, and must not be used for any other purpose. Access to the Data must be limited by the Supplier to those personnel, who need to have such access for the Purpose ("Permitted Persons").
- 2.2 For the purpose of this agreement Permitted Persons shall mean all employees, officers, staff, other workers, agents and consultants of the Supplier who are engaged in the performance of the Purpose.
- 2.3 The Supplier shall on request and subject to any requirements or limitations of the DPL, give AHDB such particulars as it may reasonably require of all persons who are or may be at any time employed in the supply of the Goods and Services.
- 2.4 The Supplier shall take all reasonable steps to ensure the reliability and integrity of any Permitted Persons who have access to the Data and ensure that they:
 - 2.4.1 are aware of and comply with the Supplier's duties under this agreement;
 - 2.4.2 are subject to appropriate confidentiality undertakings with the Supplier;
 - 2.4.3 are informed of the confidential nature of the Data and do not publish, disclose or divulge any of the Data to any third party unless directed in writing to do so by AHDB or as permitted by this Agreement; and
 - 2.4.4 have undergone adequate training in the use, care, protection and handling of personal data.
- 2.5 The Data must not be provided in whole or in part to any other natural or legal person.
- 2.6 The Supplier is responsible for ensuring that all Permitted Persons fully comply with all obligations and requirements of this Agreement. Failure to do so shall be considered a breach of this Agreement.
- 2.7 The Supplier must ensure that all Permitted Persons and any approved sub-contractor, are subject to a duty of confidence and binding written contractual obligations in respect of the Data no less onerous than those contained in this Agreement.

- 2.8 AHDB acknowledges and agrees that (a) the Supplier may engage Sub-processors in connection with the provision of the Services and (b) such Processors and Sub-processors may include the Supplier's subsidiaries and subsidiary undertakings and any holding company it may have and all other subsidiaries and subsidiary undertakings of any such holding company (as such terms are defined in the Companies Act 2006).
- 2.9 A list of Sub-processors shall be made available at <https://www.uk.mercer.com//data-protection.html>. At that location Supplier shall also provide AHDB with a mechanism to subscribe in order to receive notifications regarding Supplier's use of any new Sub-processor not included in such list ("**New Sub-processors**") for the Processing of Personal Data. Notification of a New Sub-processor shall be issued prior to such New Sub-processor being authorised to Process Personal Data in connection with the provision of the Services.
- 2.10 AHDB may object to Supplier's use of a New Sub-processor where there are reasonable grounds to believe that the New Sub-processor will be unable to comply with the terms of this DPA. If AHDB objects to Supplier's use of a New Sub-processor, AHDB shall notify Supplier promptly in writing within ten (10) days after notification regarding such Sub-processor. AHDB's failure to object in writing within such time period shall constitute approval to use the New Sub-processor. AHDB acknowledges that the inability to use a particular New Sub-processor may result in delay in performing the Services, inability to perform the Services or increased fees. Supplier will notify AHDB in writing of any change to Services or fees that would result from Supplier's inability to use a New Sub-processor to which AHDB has objected. AHDB may either execute a written amendment to the Contract implementing such change or exercise its right to terminate the Contract in accordance with the termination provisions thereof. Such termination shall not constitute termination for breach of the Contract. Supplier shall have a right to terminate the Contract if AHDB unreasonably objects to a Sub-Processor, or does not agree to a written amendment to the Contract implementing changes in fees or Services resulting from the inability to use the Sub-processor at issue.

3. Storage and Protection of Data

- 3.1 To the extent that the undertaking of this Agreement requires the Supplier to process the Data on behalf of AHDB, the Parties agree that AHDB shall be the data controller and the Supplier shall be the data processor (as such terms are defined in the DPL) and the Supplier agrees to:
- 3.1.1 comply with all applicable DPL in respect of the performance of its obligations under this Agreement and shall not by any act or omission cause AHDB (or any other person) to be in breach of any DPL;
- 3.1.2 store all data in accordance with Part 1;
- 3.1.3 process the Data only on and in accordance with AHDB's written and documented instructions as set out in this Annex 2 and provided from time to time, unless the processing is prohibited by any applicable laws and the Supplier has informed AHDB of such applicable laws;
- 3.1.4 notify AHDB immediately at Data.Protection@ahdb.org.uk if it believes that it has been given an instruction which does not comply with the DPL;
- 3.1.5 AHDB consents to transfers of Personal Data to the Supplier's respective Sub-processors based in countries outside the UK and EEA, where adequate contractual and security measures are in place between the supplier and sub-processor in accordance with UK GDPR and Data protection regulations; and

- 3.1.6 implement and maintain appropriate technical and organisational measures in accordance with this Annex 2 and in such a manner that the processing will:
- 3.1.6.1 meet the requirements of the DPL;
 - 3.1.6.2 ensure the protection of the rights of data subjects within the meaning of the DPL; and
 - 3.1.6.3 preserve the integrity of the Data and ensure a level of physical and technical security in respect of the Data at all times that is appropriate to the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, damage or alteration, or unauthorised disclosure of or access to the Data transmitted, stored or otherwise processed;
- 3.2 As a minimum level of protection for the Data, and without prejudice to any other provision of this Annex 2, the Supplier shall:
- 3.2.1 assess risks to the confidentiality, integrity and availability of the Data at least quarterly;
 - 3.2.2 verify its Information and Communication Technology (ICT) systems handling the Data to the extent necessary to give confidence in the security of the data; and
 - 3.2.3 perform secure back-ups of all Data and ensure that up-to-date back-ups are stored in accordance with a recovery plan. The back-ups shall be made available to AHDB on request.

4. Data Subject Rights

- 4.1 The Supplier may inform any enquirer that it is conditionally authorised by AHDB to have and to use the Data and that the Data is being held and used in confidence under its control. Any such enquiries shall be reported promptly to the DPO in writing at Data.Protection@ahdb.org.uk.
- 4.2 Subject to clause 5.1, the Supplier shall notify AHDB without undue delay if it:
- 4.2.1 receives a Data subject access request (or purported Data subject access request);
 - 4.2.2 receives a request to rectify, block or erase any Data;
 - 4.2.3 receives any other request, complaint or communication relating to either Party's obligations under the DPL;
 - 4.2.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Data processed under this Agreement;
 - 4.2.5 receives a request from any third party for disclosure of Data where compliance with such request is required or purported to be required by Law.
- 4.3 Assist AHDB, insofar as is possible, in the fulfilment of its obligations to respond to requests made by data subjects to exercise any of their rights under DPL.

5. Data Loss or Breach

- 5.1 The Supplier shall notify AHDB without undue delay if it becomes aware of any event that results, or may result, in unauthorised access to Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Data in any breach of this Agreement, including any Data breach. The Supplier's obligation to notify under

clause 5.2 shall include the provision of further information to AHDB in phases, as details become available.

- 5.2 Notify AHDB's DPO at Data.Protection@ahdb.org.uk of any suspected or actual breaches of security without undue delay and provide such details as may be reasonably required regarding the nature and likely consequences of the breach.
- 5.3 Notify AHDB's DPO at Data.Protection@ahdb.org.uk without undue delay if the Supplier becomes aware that AHDB Data in its possession has or may have become corrupted, lost or degraded and inform AHDB of the remedial action the Supplier proposes to take. The Supplier shall restore or procure the restoration at its expense of such data that has become corrupted, lost or degraded wholly or partially as a result of the Supplier's default as soon as practicable but not later than four (4) weeks from the date on which the possibility of such corruption, loss or deterioration comes to the Supplier's attention. Subject to the Supplier having been given a reasonable opportunity to undertake such restoration, if such restoration is performed by or on behalf of AHDB otherwise than by the Supplier, the Supplier shall promptly reimburse the reasonable costs thereby incurred by AHDB.

6. Liability

- 6.1 The Supplier shall comply with all applicable DPL in respect of the performance of its obligations under this Agreement and shall not by any act or omission cause AHDB (or any other person) to be in breach of any DPL. The Supplier accepts and acknowledges that nothing in this Agreement shall relieve the Supplier of its own direct responsibilities and liabilities pursuant to the DPL.

7. Deletion or Return of Data

- 7.1 On the earlier of the completion of the use of the Data for the Purpose or at the written request of AHDB for return or destruction of information or the date given in Part 1 ("**Completion Date**"), all copies of the Data must be returned or destroyed in accordance with Part 1 and the return or destruction must be confirmed in writing within seven (7) days of the Completion Date to AHDB's DPO at Data.Protection@ahdb.org.uk using the Data Disposal Form (a copy of which is attached at Part 2). Failure to do so shall be considered to be a breach of this contract, except as required by law or as required in order to defend any actual or possible legal claims.

8. Audit Rights

- 8.1 Provide such information, co-operation and other assistance to AHDB as AHDB reasonably requires (taking into account the nature of processing and the information available) to ensure compliance with the DPL, including with respect to security of processing, data protection impact assessments, prior consultation with a supervisory authority regarding high risk processing and any remedial action and/or notifications to be taken in response to any Data breach or request from a data subject (as such terms are defined in the DPL).
- 8.2 Maintain complete, accurate and up to date written records of all categories of processing activities carried out on behalf of AHDB including such information as AHDB may reasonably require, and make such records available to AHDB on request in a timely manner (and in any event within three (3) business days) and provide such other information or allow such inspections as AHDB reasonably requires to audit the Supplier's compliance with its obligations under the DPL and this Agreement and demonstrate its own compliance with the DPL.

- 8.3 AHDB may perform such audits once per year or more frequently if required by Data Protection Laws applicable to AHDB.
- 8.4 Audits must be conducted during regular business hours, subject to the Supplier's policies, and may not unreasonably interfere with the Supplier's business activities.
- 8.5 To request an audit, AHDB must submit a detailed audit plan to the Supplier at least six (6) weeks in advance of the proposed audit date. The audit plan must describe the proposed scope, duration, and start date of the audit. The Supplier will review the audit plan and inform AHDB of any concerns or questions (for example, any request for information that could compromise the Supplier's confidentiality obligations or its security, privacy, employment or other relevant policies). The Supplier will work cooperatively with AHDB to agree on a final audit plan.
- 8.6 Nothing in this clause shall require the Supplier to breach any duties of confidentiality owed to any of its other clients or its employees.

- The remainder of this page is intentionally blank -

Part 1

1 Subject-matter of processing:

[INSERT]

2 Nature and Purpose of the processing:

[INSERT]

3 Type of personal data:

[INSERT]

4 Categories of data subjects if relevant:

[INSERT]

5 Timelines for use of Data

[INSERT]

6 Any other processing instructions:

Data Transmission:

Data shall be transmitted securely as follows:

Fax

No Data will be sent by fax.

Email

Data sent by email must be encrypted if possible. If encryption is not possible, the data file will be password protected using at least 13 character alpha-numeric passwords. Passwords will only be supplied once data receipt is confirmed.

The Data Managers use FIPS 140-2 compliant AES256 'zip' compression and encryption software. Data files will be encrypted using public keys or as a 'zipped' file with pass-phrases as appropriate to the encryption capabilities of the data recipient.

The word '**CONFIDENTIAL**' must be entered in the subject field of the email in front of the email title in all instances.

Post

Hard copy Data may be transmitted by post, courier or messenger.

If Data must be put on CD/DVD it should be encrypted (see details of encryption above). If the data recipient is unable to collect the CD/DVD by hand, encrypted CD/DVD's may be transmitted by post (Recorded Delivery or better), courier or messenger. If encryption is not possible the CD/DVD will be password protected using at least 13 character alpha-numeric passwords. If the data recipient is unable to collect the CD/DVD by hand it will be dispatched by Royal Mail Special Delivery service with tracking of transit or by courier.

In all cases when sending Data by post, a single sealed cover addressed to an individual by name or appointment will be used. The cover must not attract attention. Therefore, it must not be marked with any protective marking and only the descriptors 'Personal' or 'Addressee Only' may be used.

In all cases Data will be sent only to a named individual, agreed in advance, and must be accessed only by Permitted Persons.

Data Storage:

Hard copies of Data must be stored in a secure building and/or in a locked cabinet, and destroyed in accordance with the below.

When held on ICT systems on secure premises, password policies must be in place that ensure only those listed can access data. The ICT infrastructure should be certified to the Cyber Essentials standard as a minimum.

Full back-up policies must be in place for servers.

Data destruction must include all backup copies of data as well as live, subject to clause 7.1.

All access to standalone machines must be protected by username/password.

All data users must avoid transferring Data onto removable media (including laptop hard-drives, removable discs, CD's, USB memory Sticks, PDA's and media card formats), except when this is essential and only as agreed in writing with the Data Manager setting out the controls to be put in place. If taken outside the organisation's secure premises, laptop hard drives, CD/DVD, USB devices or any other removable media must be fully encrypted using FIPS 140-2 compliant AES256 encryption or better

Data Destruction:

Protectively marked waste is a potential source of information and prior to its secure destruction it should be held in an appropriate secure container under lock and key separate from other waste.

Methods of Destruction:

Protectively marked paper-based waste, such as, paper and card, must be securely destroyed by incineration, pulping or shredding. Waste may be shredded on any shredder or torn into four pieces and placed in a confidential waste sack. The waste sack must be kept under lock and key until it has been collected for onward transmission to the contractor who destroys it.

Electronic media containing Data must be disposed of by overwriting, erasure or degaussing for re- use.

- The remainder of this page is intentionally blank -

Part 2

DISPOSAL OF DATA FORM

It is a condition of this Agreement that the Supplier shall return this form duly completed within 7 days of the Completion Date. It may be returned as hard copy or in pdf format by electronic mail to Data.Protection@ahdb.org.uk.

In the event that the destruction and notification requirements are not satisfied, the Supplier must immediately notify AHDB's DPO (Tel: 024 76 69 2051; Email: Data.Protection@ahdb.org.uk), specifying the reason for such failure.

Failure to do so shall be considered to be a breach of this contract.

I confirm that all Data provided under this Agreement and all copies thereof have been destroyed in accordance with this Agreement.

Signed:

Name (Block Capitals):

Date:

Organisation:

Please return the completed form within 7 days of data destruction to:

DPO, AHDB, Stoneleigh Park, Kenilworth, Warwickshire, CV8 2TL

Email: Data.Protection@ahdb.org.uk

- The remainder of this page is intentionally blank -

Appendix Specification Details

The information in this Appendix is to be read as having been amended by any amendments agreed in accordance with this Contract.

Specification for the provision of

Actuarial Services

to

AHDB

*As sponsoring employer
of a trust-based legacy
pension arrangement*

“Lot 2” – IAS19 Calculations

CONTENTS

- 1. Introduction**
 - 2. Background and context**
 - 3. Contract scope**
 - 4. Outcomes**
 - 5. Detailed requirements**
 - 6. Service levels / KPIs**
 - 7. Resources / Fees**
 - 8. Contract management**
 - 9. Data Protection**
 - 10. Contract term**
- Appendix 1 – Schedule of Dates**

1.0	INTRODUCTION												
1.1	<p>This specification document outlines actuarial services required by the <i>Agriculture and Horticulture Development Board (AHDB)</i>, in respect of The MLC Pension Scheme - a Defined Benefit pension scheme.</p> <p>AHDB is the sponsoring employer of the Meat and Livestock Commission Pension Scheme (“MLC Pension Scheme”).</p>												
2.0	BACKGROUND AND CONTEXT												
2.1	<p>Aims and objectives of actuarial services</p> <p>To provide AHDB with IAS19 Calculations (or such calculations as are required by the employer under the prevailing pensions accounting legislation).</p> <p>The actuary appointed will obtain from the Scheme and other advisors and hold an up-to-date member data extract, investment values, scheme basis/rules and other information as required to perform the relevant calculations (currently as per IAS19), with assumptions to be advised by the employer (AHDB) or such agent as they see fit.</p>												
2.2	<p>MLC Pension Scheme background information</p> <p>2.2.1 Trustee company The MLC Pension Scheme is run by a Trustee Board who are directors of the corporate trustee, MLC Pension Scheme Trustees Limited. There is a maximum of seven directors – three Member Nominated Directors (MNDs), three Employer Nominated Directors (ENDs) and one Chair nominated by AHDB.</p> <p>2.2.2 Scheme information The MLC Pension Scheme is a multi-employer pension scheme with active DB members in the employment of AHDB and Hybu Cig Cymru ("HCC"). Quality Meat Scotland (“QMS”) remains a participating employer in the Scheme but has no active members.</p> <p>The MLC Pension Scheme provides benefits based on final salary and has been closed to new entrants since 2002. There is also a subsection of the Scheme which provides DC benefits. That section closed to new entrants in 2008 (Notwithstanding anyone switching from DB to DC thereafter).</p> <p>Membership numbers are as follows as of 31 March 2020 (DB) / 31 December 2019 (DC):</p> <table><tr><td></td><td>Defined Benefit</td><td>Defined Contribution</td></tr><tr><td>Active</td><td>13</td><td>10</td></tr><tr><td>Deferred</td><td>371</td><td>75</td></tr><tr><td>Pensioner</td><td>903</td><td>0</td></tr></table> <p>Note – the sale of a participating employer, Meat and Livestock Commercial Services Limited (MLCSL), was completed in December 2018 and the associated pension liabilities were transferred to AHDB through a flexible apportionment arrangement.</p> <p>At the last triennial actuarial valuation (as at 31 March 2018), assets and liabilities were calculated to be £223.5m and £224m respectively, resulting in a funding deficit of £0.5m. AHDB agreed to make deficit recovery contributions over three payments from 31 March 2019 to 1 April 2020 and pay contributions in respect of future accrual of benefits of 27% of salaries per annum.</p>		Defined Benefit	Defined Contribution	Active	13	10	Deferred	371	75	Pensioner	903	0
	Defined Benefit	Defined Contribution											
Active	13	10											
Deferred	371	75											
Pensioner	903	0											

2.2.3	<p>The MLC Pension Scheme also has a Defined Contribution (DC) Section providing benefits on a money purchase basis to eligible new staff since 1 July 2002. The DC Section effectively closed to new entrants from 1 April 2008.</p> <p>Actuarial advice</p> <p>A scheme actuary has been appointed by the Directors of the Scheme. Actuarial services provided to the Trustees of the Scheme do not fall within the scope of this specification.</p>
2.3	<p>Current arrangements</p> <p>AHDB intends to review the current provider of pension actuarial services and the pension actuarial services marketplace to ensure that any future arrangement with the current or a new provider meets the objectives of AHDB.</p> <p>It should be noted that under the current operating model, actuarial services are provided by the same actuarial firm to AHDB and the MLC Pension Scheme. The shared advisor/Y-shaped arrangement operates under different contracts, involves different senior staff and potential conflicts of interest are managed.</p>
3.0	CONTRACT SCOPE
	<p>Any agreement/contract for services will be between AHDB and the selected actuarial services provider. It will not involve the Directors of MLC Pension Scheme Trustee Limited.</p> <p>It will cover the provision of accounting calculation services in respect of the MLC Pension Scheme.</p> <p>The contract period duration is detailed in section 10.</p>
4.0	OUTCOMES
4.1	<p>Accounting</p> <p>Accounting services must be completed in a timely manner as agreed in advance during meetings between the supplier and AHDB. Timelines must be adhered to, in order that AHDB is able to fulfil its accounting requirements for National Audit Office, <u>which are unlike those of standard private companies.</u></p>
5.0	DETAILED REQUIREMENTS
5.1	<p>General</p> <p>Actuarial Services required are set out in Section 5.2.</p> <p>Attendance at meetings is required by the service provider as determined by AHDB. Typically, these will centre around the annual accounting timetable, to include a launch meeting in or around November each year.</p>
5.2	Accounting
5.2.1	<p>Deliverable/Frequency – To provide annual year-end accounting figures and assumptions/methodology report for the MLC Pension Scheme, applying assumptions provided by AHDB (or its agent). Requirements to be performed within pre-agreed project plan timescales to ensure submission of accounts in an agreed timescale. Typically, the calculations must be provided with 8-10 working days after 31/3. The pension information is the final information for the production of the company accounts and therefore there is no flexibility on timescales.</p>

5.2.2	Year End – The MLC Pension Scheme has a “year-end” of 31 March.							
5.2.3	Valuations – The requirement is to provide annual accounting valuations of pension liabilities and assets (in accordance with IAS19 requirements or any prevailing future standard).							
5.2.4	Methodology/assumptions – Assumptions will be provided by AHDB or their agent, to facilitate your provision of figures which will be input into the year-end accounts (i.e. IAS19 figures referred to in 5.2.3 above). Methodology will be discussed and agreed with AHDB and/or their agent prior to each year end.							
6.0	SERVICE LEVELS/KPIs							
	All requirements are to be fulfilled within agreed timescales, which will be underpinned by the relevant statutory timescales as amended by regulatory/reporting body requirements.							
6.1	<p>Response times</p> <p>During the annual audit period, in line with the requirements of the bodies to which AHDB reports, all queries will need to be responded to within 24 hours (one working day).</p> <p>Each year a timetable of events will be agreed with the supplier. Some of these events will be regarded as critical as they affect AHDB’s ability to comply with its statutory requirements for accounting.</p> <p>These critical events are referenced in Section 6.4 (KPIs) below.</p> <p>All other matters are to be responded to in accordance with agreed project timelines, with all related deadlines being met.</p>							
6.2	<p>Routine supplier meetings</p> <p>The Supplier shall attend routine review meetings with AHDB. Meetings will take place on a frequency to be agreed, which will centre around the accounting timetable.</p> <p>These shall be used to:</p> <ul style="list-style-type: none"> - Discuss Supplier performance - Allow the Supplier to update AHDB on current progress - Review recent KPI reports - Review actions from the previous meeting <p>Meetings shall be via Microsoft Teams/videoconference or as agreed.</p>							
6.3	<p>Reporting</p> <p>Suppliers shall be required to provide the following reporting to AHDB as part of the contract. The structure of the reports shall be agreed with AHDB at the outset of the agreement and may be subject to change.</p> <table border="1" data-bbox="379 1839 1390 1917"> <thead> <tr> <th>Report Type</th><th>Content</th><th>Frequency</th></tr> </thead> <tbody> <tr> <td>KPI Reports</td><td>Completed KPI table with contract performance statistics.</td><td>Annually.</td></tr> </tbody> </table>		Report Type	Content	Frequency	KPI Reports	Completed KPI table with contract performance statistics.	Annually.
Report Type	Content	Frequency						
KPI Reports	Completed KPI table with contract performance statistics.	Annually.						
6.4	<p>Key Performance Indicators (KPIs)</p> <p>Termination of the contract is linked to the KPIs as specified in the table and in accordance with the agreement. KPIs will be measured and reported to AHDB on an</p>							

	<p>annual basis. The frequency may be subject to change. Performance will be discussed within routine review meetings. A completed copy of the KPI report will be supplied to AHDB by email within five working days of the end of the annual audit period, containing data from the previous year.</p> <p>Should the Supplier FAIL to meet the target percentage for the performance criteria for KPIs that constitute a failure of the supplier's contractual obligations, AHDB will issue a formal improvement notice. In the event that the Supplier fails to meet the conditions of the improvement notice and restore the expected level of service within the timeline described, AHDB reserves the right to terminate the agreement.</p> <p>Should the Supplier FAIL to meet the target percentage for the performance criteria for KPIs that constitute a serious failure of the supplier's contractual obligations, AHDB shall reserve the right to terminate the agreement with immediate effect.</p>						
	Performance Criteria	Measure	Pass criteria	Fail criteria	Percentage/ Score	Achievement	Classification in the event of Failure
	Response to AHDB requests or queries	Percentage of responses within 24 hours of the request being raised	100%	<100%		Pass/ Fail	Failure of contractual obligations
	Response to AHDB requests or queries in relation to identified critical events within the timelines agreed with AHDB	Percentage of responses within 24 hours of the request being raised	100%	<100%		Pass/ Fail	Serious failure of contractual obligations
	Adherence to agreed project timelines	All actions completed in accordance with agreed project timelines	100%	<100%		Pass/Fail	Failure of contractual obligations
	Completion of actions from previous review meetings	All actions completed from previous review meeting, in line with agreed timescales. For any actions not completed, explanation is provided and agreed with AHDB.	100-95%	<95%		Pass/ Fail	Failure of contractual obligations
7.0	RESOURCES/FEES						
	<p>A lead Actuary is to be assigned to the contract and will be responsible for relationship management, final sign-off of calculations, reports, updates etc to AHDB.</p> <p>However, other resources (for example, senior associates, analysts) can undertake work to ensure that a cost-effect service is provided to AHDB.</p>						

	<p>A fixed fee is required for one off set up costs of understanding the scheme, building the relationships and being ready to carry out the calculations.</p> <p>A fixed fee is required for the production of the annual IAS19 calculation including answering typical queries from the National Audit Office.</p> <p>An hourly fee will be required to answer additional queries or undertake work outside of the fixed fee specification.</p>
8.0	CONTRACT MANAGEMENT
	Please refer to Section 6.0 above.
9.0	DATA PROTECTION
	<p>The provider's data protection commitment must be provided and prove to be compatible with that of AHDB.</p> <p>Please refer to Clause 16 and Annex 2 of the Terms and Conditions to which this document is an Appendix.</p>
10.0	CONTRACT TERM
	<p>The contract will run for two years with annual reviews thereafter, to be undertaken by AHDB.</p> <p>The Commencement Date for this Agreement will be 1st August 2021. The Initial Term for this agreement will be 2 years.</p> <p>This Agreement will be deemed to commence on the Commencement Date and will continue for the Initial Term and after that for any Extension Period notified by the Client to the Supplier in accordance with this Agreement provided that it may be terminated earlier in accordance with its terms.</p> <p>Without prejudice to the rights of termination set out in this Agreement, the Client will be entitled to extend the term of this Agreement by one or more Extension Periods by serving an Extension Notice provided that it will not extend beyond the Longstop Expiry Date. These Extension Periods shall be a maximum of 12 months in duration. The Longstop Expiry Date for this agreement shall be 2 years following the expiration date of the Initial Term.</p> <p>Expiry of this Agreement will not affect the continuation of any Call-Off Contacts which are in existence at the time of such expiry.</p>