

RESEARCH FUNDING AGREEMENT

Agriculture and Horticulture Development Board

and

...

**Research Project
Subject – in brief
AHDB Reference: ...**

AHDB
Stoneleigh Park
Kenilworth
Warwickshire
CV8 2TL

T 024 7669 2051
E info@ahdb.org.uk
W ahdb.org.uk

FORM OF AGREEMENT

THIS AGREEMENT IS MADE ON, 201...

BETWEEN

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

AND

..., of ... (the '**Researcher**')

AHDB and the Researcher are the Parties to the Agreement.

WHEREAS

- A. The Researcher submitted a Proposal to AHDB to undertake a Research Project (see Schedule A and the Appendix);
- B. AHDB is willing to provide funding for the Project in accordance with this Research Funding Agreement.

IT IS HEREBY AGREED:

- 1 The Researcher agrees to carry out the Project, undertaking research and development and providing any related services and goods, in accordance with this Agreement including Schedule A and the Appendix.
- 2 Subject to the Researcher's compliance with this Agreement including the milestones, AHDB agrees to make payments in accordance with Schedule B.
- 3 The Parties agree to comply with AHDB's Terms and Conditions for Research Funding Agreements version 2P.2018A ('RFA Terms' - see Annex 1), which are incorporated into this Agreement.
- 4 This Agreement consists of:
 - this Form of Agreement;
 - Schedule A (Specification, Milestones, Reports, page 6) including the Appendix (Specification Details, page 56);
 - Schedule B (Payment and Invoicing, page 7);
 - Schedule C (Contacts, page 8);
 - Annex 1 (RFA Terms, page 10);

- Such of Annex 2 (Intellectual Property Rights vested in the Researcher, page 44) or Annex 3 (Intellectual Property Rights retained by AHDB, page 47) as may apply pursuant to Clause 4.1; and
 - Annex 4 (Data Processing and Protection of Personal Data, page 49),
each of which together with any documents specified therein including the Appendix is incorporated into and forms part of the Agreement.
- 4.1 Subject to Condition 18.18 and any agreement otherwise in Writing, Annex 2 shall apply and Annex 3 shall not apply Annex 3 shall apply and Annex 2 shall not apply.
- 4.2 Subject to Clause 4.5.2, in the event of any conflict or inconsistency documents shall take precedence in the order in which they appear in Clause 4 above.
- 4.3 Subject to public procurement law, this Agreement 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.
- 4.4 This Agreement 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.
- 4.5 If and only if this Agreement includes the provision by the Researcher of goods and services other than Research:
- 4.5.1 AHDB's Terms and Conditions for the Purchase of Goods and Services ('AHDB Terms') in effect at the time of making this Agreement shall apply in addition to the RFA Terms to the provision of such goods and services. Those AHDB Terms will be provided on written request to the Legal Adviser, Agriculture and Horticulture Development Board, Stoneleigh Park, Kenilworth, Warwickshire CV8 2TL.
- 4.5.2 Insofar as there is conflict between the AHDB Terms and the RFA Terms (Annex 1) in relation to such provision of such goods and services, the AHDB Terms shall prevail.
- 5 The Researcher commenced or shall commence work on the Project on, 20... ('Commencement Date').
- 5.1 The Researcher shall complete the Project not later than, 20... ('Completion Date').
- 5.2 Any date in this Agreement 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 Agreement 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 Agreement 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 Agreement 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 Agreement 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; and

(b) the maximum aggregate liability of the Researcher 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 Agreement 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, or arising as a result of any breach of Data Protection Legislation.

7 For the avoidance of doubt, the Researcher's standard terms and conditions for the undertaking of research or the supply of goods or services do not apply to this Agreement except as may be specifically agreed in Writing.

8 Any amendments to the Annexes to this Agreement shall be made as sub-clauses below.

9 Special Conditions

9.1 Any conditions specified in this Form of Agreement as Special Conditions shall prevail over any other provision in this Agreement.

9.2 There are no Special Conditions.

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

Signature:

Name of signatory:

Date:, 201...

Signed for and on behalf of the Researcher:

Signature:

Name of signatory:

Date:, 201...

Schedule A Specification, Milestones, Reports

1. Description of the Project

- 1.1. The Title of the Project is
- 1.2. AHDB's Reference to be used in all communications relating to the Project is

2. Specification

- 2.1. The Specification is detailed in the Appendix, page 56.
- 2.2. The Specification is based on:
 - the invitation and/or acceptance by AHDB for the undertaking of the Project, whether by tender or otherwise, and
 - the Researcher's offer but excluding any of the Researcher'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 Agreement.

3. Milestones

- 3.1. The following milestones are agreed:

<i>Date</i>	<i>Milestone</i>

4. Reporting

- 4.1. The following reports shall be provided not later than the specified dates (see also Condition 14 and paragraph 4.2.3 below):

<i>Date</i>	<i>Report</i>

- 4.2. The Researcher shall provide one electronic copy of each required report to AHDB by the date specified above (or as may be agreed prior to such date in writing) in accordance with this Agreement, including Schedule C and Condition 14.
 - 4.2.1. Reports other than final reports shall comply with Condition 14.2.
 - 4.2.2. Final reports shall comply with Condition 14.3.
 - 4.2.3. The Researcher shall supply any additional reports, including financial reports, in respect of the Project at such time or times and in such form as AHDB may reasonably require.
 - 4.2.4. Failure to satisfy this paragraph 4.2 is agreed to be a material breach of this Agreement.
 - 4.2.5. Condition 16.4 shall apply.

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Schedule B Payment and Invoicing

1. AHDB shall raise a Purchase Order following its receipt of this Agreement signed by the Researcher, the serial number of which shall be provided to the Researcher's Representative.
2. Subject to Condition 16.3.1 and any agreed amendment of this Agreement in Writing, AHDB will pay the Researcher no more than £..., exclusive of VAT.
- 2.1. Subject to compliance with this Agreement including the milestones and reporting obligations, payment shall become due against proper invoices as follows:

<i>Date</i>	<i>Description</i>	<i>Amount (VAT- exclusive)</i>

- 2.2. If the Agreement is amended, any payment schedule relating to this Agreement may be adjusted appropriately.
- 2.3. Condition 16.4 shall apply.
- 2.4. The final claim for payment shall be made within four months of the Completion Date.
- 2.5. Payments by AHDB under this Agreement shall be with money unless they are agreed to be in kind.
3. An invoice shall be deemed to be proper if it is submitted in compliance with this Schedule, paragraph 3.1 below is satisfied, and it includes:
 - (a) the serial number of AHDB's Purchase Order;
 - (b) the Title of and the Reference to the Project as set out in Schedule A;
- 3.1. 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 costs and any other documentation reasonably required by AHDB to substantiate the invoice.
- 3.2. Unless otherwise agreed, the information required by paragraph 3.1 and a copy of each invoice shall be provided to AHDB's Representative (electronic provision is acceptable).
- 3.3. VAT will only be paid if a proper VAT invoice is submitted. The Researcher must exercise due care not to charge VAT on claims which are not chargeable to VAT.
- 3.4. AHDB's address for submission of invoices will be:

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

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Schedule C Contacts

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

AHDB

3. AHDB's address for correspondence and service (excluding invoices, see Schedule B) including the submission of reports under Condition 14, 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 Representative and shall include the Title and Reference of the Project as set out in Schedule A.
4. AHDB's Representative will be:
...
or such other person as AHDB may nominate.
- 4.1. AHDB's Representative will accept communications by electronic mail (.....@ahdb.org.uk) and (except for notices and other matters required to be in Writing) by telephone (☎ 024 7647 8...).
5. The Industry Representative (if any) will be:
...
or such other person as AHDB may nominate.
- 5.1. Communication with the Industry Representative may be by electronic mail (.....@...), by telephone (☎ 0... ..) or at the following address:
...
- 5.2. Communication in any form with the Industry Representative will not satisfy any requirement for communication between the Parties.

Researcher

6. The Researcher's address for correspondence and service will be:
...
- 6.1. Communications with the Researcher shall be marked for the attention of the person named below as the Researcher's Representative.
7. The Researcher's Representative will be:
...
or such other person as the Researcher may nominate.
- 7.1. Unless otherwise agreed, the Researcher's Representative will accept communications by electronic mail@... and (except for notices and other matters required to be in Writing) by telephone (☎ 0...).

7.2. Communication to the Researcher's Representative shall be deemed to be communication to all researchers undertaking the Project unless it is agreed that AHDB will communicate directly with them and how this shall be achieved.

8. The Lead Scientist will be:

...

or such other person as the Researcher may nominate.

8.1. Communication with the Lead Scientist may be by electronic mail (.....@...), by telephone (☎ 0... ..) or at the following address:

...

8.2. Communication with the Lead Scientist will not satisfy any requirement for communication to the Researcher's Representative unless the Lead Scientist is the Researcher's Representative.

9. The Key Personnel if any relating to the Researcher will be:

...

or such other persons as the Researcher may nominate.

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Annex 1 RFA Terms

Agriculture and Horticulture Development Board Terms and Conditions for Research Funding Agreements version 2P.2018A

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1. DEFINITIONS

1.1. In this Agreement 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 (if appropriate) tertiary education. Unless otherwise specified any employee, Student, agent and consultant thereof relevant to the Project 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 Agreement unless it is a body constituted <i>per se</i> for the principal purposes of academic research and (if appropriate) tertiary education;</p>
Agreement	This written agreement between AHDB and the Researcher as described in Clause 4;
AHDB	The Agriculture and Horticulture Development Board or any subsidiary thereof;
AHDB Data	Has the meaning given to it in Annex 4;
AHDB's Property	Anything owned by or in the possession of or under the control of or to be vested in AHDB;
AHDB's Representative	The person named as such in Schedule C;
AHDB Terms	AHDB's Terms and Conditions for the Purchase of Goods and Services.
Annex	An annex incorporated into this Agreement under Clause 4;
Appendix	The appendix incorporated into this Agreement 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.
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>
Confidentiality Notice	Has the meaning given to it in Condition 3.3.1;
Contracted Worker	A person complying with the criteria set out in Condition 7.1;
Contractor's Confidential Information	For the purposes of Condition 20.2.1 only, any information, which has been designated as confidential by AHDB or the Researcher 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 Researcher, 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;
"Data Protection Legislation"	The Data Protection Act 1998 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 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 16.3;
EU Results	The 'results' as mentioned in Article 31 of Commission Regulation (EU) No 702/2014 (Official Journal of the European Union, 1.7.2014, L 193, p.1), being a sub-set of the Results;
FOI Legislation	The Freedom of Information Act 2000 and similar legislation, as set out in Condition 20.1;
Form of Agreement	The agreement on the undertaking of the Project, to which the Schedules, Annexes, Appendix and other documents are attached;
Income	Any revenues received by the Parties (including the sale or disposal of products or services, royalties, payments for licences or options and stage payments) irrespective of whether such

		payment is in money or other consideration, arising from the use or exploitation of the Results or any part of the Results;
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;
Industry Representative		Any person named as such in Schedule C. If no Industry Representative is identified therein, all references to Industry Representative in this Agreement shall have no effect;
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 Researcher in Schedule C. If no Key Personnel is identified therein, all references to Key Personnel in this Agreement 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);
Lead Scientist		The person named as such in Schedule C. If no Lead Scientist is identified therein, all references to Lead Scientist in this Agreement shall have no effect.
Party		Each of AHDB and the Researcher;
Project		The Research project as set out in the Specification as that may have been amended in accordance with this Agreement;
Project Meeting	Review	Such a meeting as shall be agreed in compliance with Condition 9.5;
Project Year		Each consecutive period of twelve calendar months beginning on the first day of the month containing the Commencement Date;
Proposal		The application, offer, proposition or tender submitted by the Researcher containing its proposals for the Project;
Publication		Any disclosure to a third party (unless covered by a written confidentiality agreement) however made, including by the submission of abstracts, or papers, or poster presentations or other materials at conferences or seminars, and 'Publish' is to be construed accordingly;
Purchase Order		AHDB's Order for the undertaking of the Project under the Agreement;
Reference		As set out in Schedule A;

Representative	AHDB's Representative, the Industry Representative or the Researcher's Representative;
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;
Researcher	The natural or legal person named in the Form of Agreement as the Researcher. For the avoidance of doubt: <ul style="list-style-type: none"> the Researcher may comprise more than one person, and a person undertaking activities on behalf of the Researcher shall not comprise part of the Researcher unless he is named as such in the Form of Agreement;
Researcher's Representative	The person named as such in Schedule C;
Results	Any Intellectual Property Right created by agents, employees, students or sub-contractors of the Researcher as a result of the Project including associated information and any representation thereof;
RFA Terms	AHDB's Terms and Conditions for Research Funding Agreements (the content of this Annex 1);
Schedule	A schedule incorporated into this Agreement under Clause 4;
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;
Student	A research student undertaking the Project under the supervision of the Researcher;
Title	As set out in Schedule A;
Working Day	Any day other than a Saturday, Sunday or public holiday in the country of receipt;
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 Agreement:

- 1.2.1. to the Researcher or to AHDB shall, where appropriate, be references to any lawful successor, assignee or transferee;
- 1.2.2. to the Researcher shall refer to each person constituting the Researcher and where the Researcher consists of more than one person, subject to any agreed allocation of specific work concerning any part(s) of the Project to a person or any agreement otherwise, the obligations and liabilities of those persons in relation to the Agreement shall be joint and several;

- 1.2.3. to Clauses are references to the clauses of this Form of Agreement, to Conditions are references to the terms and conditions of the RFA Terms and to paragraphs are references to paragraphs in the referring Annex, 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 Agreement are for convenience only and shall be ignored in construing the Agreement.

2. TERMS AND CONDITIONS

- 2.1. Subject to the operation of law, these RFA Terms read with the other provisions of this Agreement as any such may be amended shall govern the Agreement to the entire exclusion of all other terms or conditions.
 - 2.1.1. Any amendment to this Agreement shall have effect only in relation to this Agreement and only if agreed in Writing.
 - 2.1.2. The terms of this Agreement 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 Agreement will not amend the terms of the Agreement.

3. AGREEMENTS WITH ACADEMIC INSTITUTIONS

- 3.1. Notwithstanding any other Condition in these RFA Terms, this Condition 3 applies if the Researcher is an Academic Institution (or is deemed to be such by this Agreement) and the Project is to be undertaken wholly or in part by an employee of the Researcher or by a Student in pursuance of the advancement of education by the Researcher through teaching and research.
 - 3.1.1. The Researcher shall ensure that the employee, Student and any supervisor of the Student are subject to requirements that will ensure the compliance of the Researcher with the Agreement, save that the application of Condition 5.1.1 shall take into consideration any reasonable limitations consequent upon normal academic principles and standards.

- 3.2. AHDB agrees that the Researcher may use the Results for academic and research purposes and the Researcher agrees that in so doing it will comply with this Condition 3.2.
- 3.2.1. Subject to Conditions 3.3 and 3.4, employees, students, agents or appointees of the Researcher (including the Student and his supervisor) may discuss work undertaken as part of the Project in such seminars, tutorials and lectures as may be agreed with the Researcher and may Publish Results.
- 3.3. The Researcher and the Student shall respect the interests of AHDB and the Industry. To this end, they shall submit Results intended for Publication to AHDB in Writing in good time to enable AHDB to consider whether such Publication is likely to compromise such interests and in any case not less than 30 days in advance of the proposed Publication or of the date(s) when intention to publish or the content of the Publication must be decided, whichever is the soonest.
- 3.3.1. AHDB may, by giving notice to the Researcher ('a Confidentiality Notice') in accordance with Condition 8, require the Researcher and the Student to delay Publication or submission for Publication for a maximum of six months. AHDB may request a longer delay. If the Researcher does not receive a Confidentiality Notice within thirty days from AHDB's receipt of the details of the proposed Publication it or the Student may proceed with the proposed Publication.
- 3.4. The Researcher and the Student shall use reasonable endeavours not to disclose to any third party any Confidential Information.
- 3.4.1. Neither the Researcher nor the Student will breach the confidentiality obligation in Condition 3.4 to the extent that any Confidential Information which is disclosed:
- (a) has been approved for release by AHDB's Representative in Writing;
 - (b) by Publishing Results if the Researcher or the Student have followed the procedure in Condition 3.3 and have received no Confidentiality Notice within the period stated in that Condition, as appropriate.
- 3.4.2. The Parties may each identify (i) AHDB, the Researcher and the Student, (ii) the existence of this Agreement, (iii) the Title, Reference and a summary of the Project, and (iv) the sums paid or received in relation to the Project in any publication listing the research being undertaken.
- 3.5. No Party shall use another Party's name or logo in any press release or product advertising or for any other commercial purpose, without the prior consent in Writing of the other Party.
- 3.6. No requirement for an indemnity nor any consequential requirement for insurance and evidence shall apply.

4. UNDERTAKINGS BY THE RESEARCHER

- 4.1. The Researcher undertakes that:
- 4.1.1. 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;
 - 4.1.2. it has understood the nature and extent of the Project to be carried out and satisfied itself in relation to all matters connected with the project including the supply of and conditions affecting labour, the suitability of the premises where the project is to be carried out and any equipment necessary for the carrying out of the Project subject to all such matters being reasonably discoverable by the Researcher;

- 4.1.3. 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 undertaking of the Project;
 - (b) proper use by AHDB of any documentation, materials or results delivered by the Researcher pursuant to the Agreement;
 - (c) appropriate use of the Results, which shall take into due consideration any relevant advice on such use that the Researcher may provide.
- 4.1.4. it shall take reasonable steps in relation to those researchers taking part in the Project to ensure that there is no conflict of interest as would be likely to prejudice its impartiality and objectivity in performing the Project 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.
- 4.1.5. it shall at all times during the duration of this Agreement and at its own expense:
- (a) maintain all licences and consents necessary for the performance of its obligations under the Agreement;
 - (b) adopt safe working practices and shall not in the performance of the Agreement 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 Agreement, it does not cause any disturbance or damage to the operations and property at the relevant site;
 - (d) comply with AHDB's conditions and policies in relation to any site under the control of AHDB and any code of conduct and code of ethics that AHDB may provide to the Researcher from time to time;
 - (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 Project (which notification shall not release the Researcher 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 Project.
- 4.2. The undertakings given under this Condition 4 shall survive any performance, acceptance or payment pursuant to, or any expiry or termination of, the Agreement.

5. PERSONNEL

5.1. The Researcher shall:

- 5.1.1. deploy sufficient personnel of appropriate qualifications, competence and experience to complete the Project to time and ensure that they are properly managed and supervised;

- 5.1.2. carry out and ensure that its employees, agents and sub-contractors carry out the Project with reasonable skill, care and due diligence, in accordance with best professional, technical and scientific knowledge and practice, any legislative requirements and acting with integrity.
- 5.1.3. take reasonable steps to avoid any changes of Key Personnel, but where the Researcher considers it necessary to do so or such Key Personnel withdraw from or become unavailable for the Project for any reason, the Researcher shall promptly inform AHDB and shall take appropriate steps to replace the Key Personnel.
- 5.2. All persons employed by the Researcher on the Project shall be its responsibility as employer. The Researcher shall be liable to AHDB for any loss AHDB may suffer arising out of the relationship of the Researcher with any person employed by it or its sub-contractors in relation to the Project 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 Researcher could not reasonably have prevented the act or failure to act leading to the loss.
- 5.3. The Researcher shall on request and subject to any requirements or limitations of the Data Protection Legislation, give AHDB such particulars as it may reasonably require of all persons who are or may be at any time employed on the Project.

6. TUPE

- 6.1. The Researcher 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 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).
- 6.2. The Researcher shall not:
 - (a) at any time during the Agreement, including any extension, move any staff into the undertaking or relevant part of the undertaking which provides the Project, who do not meet the standards of skill and experience or who are in excess of the number required for the purposes of the Agreement; or
 - (b) make any substantial change in the terms and conditions of employment of any staff engaged in providing the Project that is inconsistent with the Researcher's established employment and remuneration policies.
- 6.2.1. 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 6.2, AHDB shall have the right:
 - (a) to make representations to the Researcher against the change or proposed change;
 - (b) to give notice to the Researcher in accordance with Condition 8 requiring it to remedy the breach within 30 days; and
 - (c) if the Researcher has not remedied the breach by the end of the period of 30 days to the satisfaction of AHDB acting reasonably, to terminate the Agreement in accordance with Condition 18.4.

- 6.2.2. If, after due consultation with the Researcher, AHDB reasonably requires and gives the Researcher notice in accordance with Condition 8 that any person is to be removed from involvement in the Project, the Researcher shall take reasonable steps to comply with such notice.
- 6.3. 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 Agreement, the Researcher 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 Researcher 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.
- 6.3.1. The Researcher 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 Researcher is required to provide under Condition 6.3.
- 6.3.2. AHDB shall take reasonable precautions to ensure that the information referred to in Condition 6.3 is given only to providers who have qualified to tender for the future provision of the Project or similar research, goods or services.
- 6.3.3. AHDB shall require any provider 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.

7. CONTRACTED WORKERS

- 7.1. This Condition 7 applies in relation to and only in relation to a person satisfying all of the following criteria (a 'Contracted Worker'):
- 7.1.1. The person must be contracted to undertake Research for or supply goods or services to AHDB for six months or more, directly by this Agreement or consequent upon an obligation in this Agreement upon the Researcher;
 - 7.1.2. 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;
 - 7.1.3. The person must be or have been liable to pay UK income tax and/or national insurance contributions at the appropriate time;
- 7.2. Insofar as the Contracted Worker is liable to be taxed in the UK in respect of consideration received in relation to this Agreement, 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.

- 7.3. Insofar as the Contracted Worker is liable to National Insurance Contributions (NICs) in respect of consideration received in relation to this Agreement, 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.
- 7.4. AHDB may, at any time during the term of this Agreement, request the Contracted Worker to provide within a specified period information which demonstrates how he complies with Conditions 7.2 and 7.3 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.
- 7.4.1. AHDB may supply any information which it receives under this Condition 7.4 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.
- 7.5. Insofar as the Researcher is a Contracted Worker or the Researcher 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 Agreement, this Condition 7 shall apply in relation to each Contracted Worker
- 7.5.1. The Researcher shall ensure that such contracts:
- (a) contain obligations and other provisions equivalent to those in this Condition 7 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 7 may lawfully be provided to AHDB and be provided by AHDB to the Commissioners of Her Majesty's Revenue and Customs.
- 7.6. Subject to Condition 18.12, AHDB may terminate this Agreement if:
- (a) in the case of a request mentioned in Condition 7.4, 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 7.2 and 7.3 above or why those Conditions do not apply to him; or
 - (b) AHDB receives information which demonstrates that, at any time when Conditions 7.2 and 7.3 apply to the Contracted Worker, he is not complying with those Conditions.
- 7.6.1. Amendments to the Agreement under Condition 18.12 may exclude the Contracted Worker but AHDB shall have no liability to the Researcher in relation to any liability thereby falling upon the Researcher.

8. CONTACTS AND COMMUNICATION

- 8.1. AHDB and the Researcher shall each nominate a Representative as its principal point of contact.
- 8.1.1. The Researcher shall:

- (a) nominate a Lead Scientist who may be the same person as the Researcher's Representative;
 - (b) nominate any Key Personnel.
- 8.1.2. AHDB may nominate an Industry Representative.
- 8.1.3. Any such nomination shall be in Writing to the other Party.
- 8.2. The Representatives, the Lead Scientist and the Key Personnel shall communicate as necessary to facilitate the performance of this Agreement.
- 8.3. Contact and communication information relating to each Party is set out or deemed to be set out in Schedule C.
- 8.3.1. Unless otherwise agreed, any communication between the Parties concerning the Agreement and the Project shall be in English.

Notices

- 8.4. Any notice required to be given shall:
 - 8.4.1. be in permanent written form and signed by or on behalf of a duly authorised officer of the Party giving notice;
 - 8.4.2. 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.
 - 8.4.3. 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.
- 8.5. 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 8.4.2, 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.
- 8.6. The Researcher may require in Writing that any notice given otherwise than by post shall be confirmed by pre-paid first class post (or by air mail if one Party is outside the UK) to the address of the receiving Party specified in Schedule C.

9. PROJECT MANAGEMENT

- 9.1. The Researcher's Representative shall:
 - (a) monitor and do all that is reasonably practical to expedite and ensure the proper performance of the Project;

- (b) act as the formal contact point between AHDB and the Researcher for the collection, co-ordination and communication of management information and delivery of any other items which the Researcher is required to provide;
 - (c) inform AHDB's Representative promptly of the commencement of the performance of the Project and of the completion, cessation or any anticipated delay in the performance of the Project;
 - (d) ensure that AHDB's Representative is supplied promptly with all documents and other items which the Researcher is required to provide;
 - (e) attend Project Review Meetings together with other researchers or advisers as appropriate;
 - (f) convene and chair Project Review Meetings and distribute in advance the agenda and any other relevant papers for each such meeting;
 - (g) record and distribute to each Party the minutes of the proceedings of each Project Review Meeting;
 - (h) provide promptly and fully to AHDB's Representative all such co-operation and assistance as may reasonably be required in relation to the Project.
- 9.2. AHDB's Representative shall:
- (a) monitor, co-ordinate and facilitate the proper performance of the Project;
 - (b) receive notices, reports and other documents from the Researcher.
- 9.3. The Parties shall keep the Industry Representative informed to such extent as shall be agreed.
- 9.4. The Lead Scientist shall be responsible for the management of the scientific and technical aspects of the Project and for providing AHDB's Representative with progress reports and management reports in accordance with the Agreement.
- 9.5. AHDB's Representative, the Researcher's Representative and the Lead Scientist, together with such additional persons as any Party may decide subject to any reasonable objection by the other Party, shall meet in Project Review Meetings not less than once in each year to assess and facilitate the progress of the Project.
- 9.5.1. Such additional persons shall be identified to the other Party in writing at least ten days in advance of such a meeting and unless they are employees of a Party shall be bound in Writing to non-disclosure of Confidential Information.
- 9.5.2. Project Review Meetings may include:
- (a) a short presentation on the Results to date.
 - (b) discussion of progress, Reports and future work in relation to the Project, including amendments to the scheduled work and consequential changes to the costings;
 - (c) discussion on communication and use of the Results, including the transfer of Know-How and related information to AHDB's stakeholders and ways of monitoring and evaluating eventual uptake of the Results.
- 9.6. Meetings shall comply with any reasonable requirements of AHDB.
- 10. EQUIPMENT**
- 10.1. Unless otherwise agreed in Writing with AHDB, the Researcher shall provide the equipment necessary for the undertaking of the Project.

- 10.1.1. Each item of equipment having an estimated cost in excess of £3,000 that is purchased by the Researcher for use on the Project shall where reasonably practicable be acquired by transparent competitive tender.
- 10.1.2. If, after due consultation with the Researcher, AHDB reasonably decides and gives the Researcher notice in accordance with Condition 8 that any equipment is to be removed from involvement in the Project, the Researcher shall take reasonable steps to comply with such notice.
- 10.1.3. Items of equipment that are to be used in the performance of the Project shall be in good and serviceable condition.
- 10.1.4. All equipment shall be held and used at the risk of the Researcher and AHDB shall have no liability for any loss of or damage to any equipment except to the extent that the Researcher is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of AHDB.
- 10.2. Subject to any agreement to the contrary, the ownership of any item of equipment costing £2,000 or less for which AHDB has reimbursed or is required to reimburse the Researcher under this Agreement (or together with similar agreements) shall vest in the Researcher.
- 10.3. Subject to any agreement to the contrary, AHDB's Property shall include any item of equipment costing in excess of £2,000 for which AHDB has reimbursed or is required to reimburse the Researcher.
 - 10.3.1. AHDB's Property shall remain the property of AHDB and shall be used in the performance of the Agreement and for no other purpose without the prior approval of AHDB.
 - 10.3.2. The Researcher shall ensure that the title in AHDB's Property is brought to the attention of any third party dealing with AHDB's Property.
 - 10.3.3. AHDB may dispose of any of AHDB's Property to the Researcher at any time by sale at market price or with the agreement of AHDB's Director of Finance and Business Services at a lower or no price.
- 10.4. On receipt of AHDB's Property, the Researcher shall subject it to a visual inspection and such additional inspection and testing as may be necessary to check that it is not defective. If the Researcher discovers any defect, it shall give notice in accordance with Condition 8 to AHDB within 14 days of receipt of the Property, or such other period as may be agreed. AHDB shall, within 14 days of receiving such notification, inform the Researcher of the action to be taken.
- 10.5. The Researcher shall maintain all items of AHDB's Property in good and serviceable condition (fair wear and tear excepted) and in accordance with the manufacturer's recommendations.
 - 10.5.1. The Researcher shall be liable for any loss of or damage to any of AHDB's Property except and insofar as:
 - (a) the Researcher is able to demonstrate that such loss or damage was caused or contributed to by reasonable wear and tear and not by the negligence or default of the Researcher; or
 - (b) the Researcher is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of AHDB.
 - 10.5.2. The Researcher shall promptly inform AHDB of any need to repair or replace any of AHDB's Property and AHDB shall be responsible for such repair or replacement unless such need is caused by the negligence or default of the

Researcher, including by the Researcher's failure to comply with Conditions 10.3.1 or 10.5.

- 10.6. AHDB shall have the right at any time to require the Researcher either to pass any of AHDB's Property into AHDB's possession or to dispose of it. In the latter event, the Researcher shall ensure that full market price is paid and shall pass to AHDB all monies realised by the disposal less the Researcher's costs reasonably incurred in such disposal.
- 10.6.1. The Researcher shall not be responsible for any failure to complete all or part of the Project insofar as it is caused by AHDB's withdrawal of equipment or the removal of equipment pursuant to Condition 10.1.2, provided reasonable mitigatory steps are taken including if appropriate the use of alternative equipment.

11. PERFORMANCE OF THE PROJECT

- 11.1. The Researcher shall properly manage and monitor the Project and inform AHDB in Writing without undue delay if any aspect of the Agreement is not being or is unable to be performed.
- 11.1.1. The Researcher shall provide all the facilities necessary to complete the Project.
- 11.1.2. Any materials or processes used in connection with the carrying out of the Project shall be in accordance with standards set out in the Agreement.
- 11.2. The Researcher shall carry out the Project in accordance with the Specification; ensure that its employees, agents and sub-contractors act with reasonable skill, care and diligence; and deliver the Results to AHDB.
- 11.3. The Researcher shall take reasonable steps to follow best professional or good industry practice and ensure compliance with all applicable laws, codes of practice including the Joint Code of Practice for Research¹, guidelines and any Standards set out in the Specification, including acting in accordance with relevant research governance principles, by itself and its servants, employees, agents and sub-contractors.
- 11.4. The Researcher confirms that:
- 11.4.1. it will comply with best practice and relevant provisions, whether statutory or otherwise, relating to health and safety at work;
- 11.4.2. it will comply with the Data Protection Legislation; and
- 11.4.3. it will not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010.
- 11.5. The Researcher confirms that in entering into the Agreement it has not:
- 11.5.1. colluded with any competitor in formulating its offer to undertake the Project except insofar as any such competitor is a named participant in a consortium in relation to the Project of which the Researcher is also a participant;
- 11.5.2. canvassed any person associated with AHDB or otherwise sought improperly to improve its competitive position in relation to this Agreement;
- 11.5.3. done or omitted to do anything that would result in a breach of the Bribery Act.
- 11.6. The Parties recognise that:

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69512/pb13725-research-code-practice.pdf.

- (a) this Agreement may provide for the carrying out of experimental research and its undertaking may involve or produce experimental materials, data or processes whose properties and safety may not have been established and any such provided by the Researcher in relation to the Project are supplied 'as is' and without any express or implied warranties, representations or undertakings; and
 - (b) unless otherwise agreed, the Researcher does not undertake that the Project will provide specific results or provide data which can be used for a particular purpose.
- 11.6.1. This Agreement shall be construed accordingly taking the agreed intention to achieve the objectives of the Project into full consideration.
- 11.7. Except to the extent permitted in this Agreement, the Researcher 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 Researcher's obligations under the Agreement.
 - 11.7.1. Each Party may discuss the Agreement and its performance with any adviser or consultant subject to appropriate conditions of confidentiality.
- 11.8. The Parties acknowledge that the Project may generate valuable and confidential Results and that the ability to exploit such Results will depend on all such technical information, documents and other materials recording or embodying the Results remaining confidential and secure and agree that they will store, use and disclose confidential Results appropriately.
- 11.9. The Researcher shall promptly, and in any case within one week of its becoming aware of any circumstances likely to adversely affect the progress of the Project or the time in which it will be completed, bring these matters to the attention of AHDB's Representative in Writing and the Representatives shall reasonably agree any consequential action that shall be taken.
- 11.10. If the Researcher is unable to carry out its obligations or satisfy any requirements under the Agreement due to any infringement or alleged infringement of any Results which it cannot rectify within a reasonable period such inability shall be deemed a breach by the Researcher and AHDB may without prejudice to any other rights and remedies exercise the powers and remedies available to it under Condition 18.
- 11.11. Where the Project involves research into factors such as infections or infestations, the Researcher will aim to establish experimental conditions that will provide such factors so as to meet the Project requirements. AHDB acknowledges that due to the inherent nature of field experiments, the Researcher cannot guarantee that such factors will always occur. Where they do not occur, the Researcher undertakes to inform AHDB's Representative in Writing as soon as reasonably practical.
- 11.12. Each Party shall, subject to being informed reasonably in advance, attend all meetings specified in the Agreement or otherwise reasonably arranged by either Party for the discussion of matters concerned with the Project.
- 11.13. The Researcher shall ensure that it has access to all records which relate to the Project and agrees to record all methodology, information and data arising from the Project, including from other participants in the Project (hereinafter the 'Records')
 - 11.13.1. It shall retain in its possession or otherwise all Records that contain Project technical information for seven years after the later of the termination of the Project or the publication of the final report and all other Records for a further

three years and make such Records available to AHDB during such retention periods.

- 11.13.2. the Records shall include all methodology, information and data that would be necessary to repeat and compare the Project as it was undertaken and they shall unless otherwise agreed be kept and provided to AHDB in a format readable using Microsoft Office or Adobe Acrobat.
- 11.14. On completion of the Project, or in the event that the Agreement is terminated otherwise, the Researcher shall retain or transfer to AHDB in accordance with Condition 11.13.2 such Records as AHDB may direct, or, where such Records are in the possession of any third party, shall procure that the same is done. The Researcher shall be entitled to securely retain a copy of them solely for the purpose of audit in relation to the Project.
- 11.15. AHDB agrees that experimental records and matters relating thereto may be recorded in bound laboratory books, the parts of which that relate to the Project shall be retained and made available in accordance with Condition 11.13.
- 11.16. Compliance with the retention provisions of Condition 11.13.1 and the transfer provisions of Condition 11.14 in relation to any record shall be deemed to have been fulfilled if a complete and true copy of that record has been provided to AHDB and a receipt obtained by the Researcher.

12. SUB-CONTRACTING

- 12.1. Without prejudice to the provisions of Annex 4, where the Researcher enters into a Sub-Contract for the purpose of fulfilling its obligations under the Agreement, it shall ensure that provisions are included *mutatis mutandis* in the Sub-Contract which:
 - (a) have the same effect as Conditions 16.3, 16.3.1 and 16.3.2; 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 16.3, 16.3.1 and 16.3.2.

In this Condition 12.1, '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 Agreement.

- 12.2. The Researcher shall ensure that any sub-contractor complies with the terms and conditions of the Agreement insofar as they relate to satisfaction of the Researcher's obligations and shall provide AHDB on request with a copy of any sub-contract.
- 12.2.1. Where the Researcher 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.
- 12.3. Any sub-contract shall not relieve the Researcher of its obligations under the Agreement and the Researcher shall remain liable to AHDB for any performance or non-performance of such obligations.

13. MONITORING OF PROGRESS AND ACCESS TO DOCUMENTS

- 13.1. In order to monitor the Researcher's performance of the Project, AHDB or its Representative may at any reasonable time enter into and inspect any facilities and resources used by the Researcher in its performance of its obligations under the Agreement.

- 13.1.1. AHDB shall reasonably inform the Researcher in advance of its intention to so enter and inspect save where AHDB has good reason not so to do,
- 13.1.2. The Researcher agrees that AHDB shall be so entitled to monitor the Researcher's performance of the Project and inspect and take copies of any records of the Researcher connected with its activities under the Agreement.
- 13.2. AHDB reserves the right to discuss any or all parts of the Project with any person duly authorised by AHDB subject in each case to the imposition of appropriate conditions of confidentiality.
- 13.3. The Researcher shall permit duly authorised agents of AHDB and/or the National Audit Office (or a devolved audit office) or the European Court of Auditors to examine any Researcher's records and documents relating to the Agreement and shall provide such copies and oral or written explanations as may reasonably be required.
- 13.3.1. Following discussion of the circumstances between the Parties, costs in relation to such audits shall on request be reimbursed by the Researcher in the event that there is a discrepancy of greater than 5% in any financial accounts, or proven negligence by or on behalf of or otherwise to the knowledge of the Researcher, as demonstrated by the findings from the examinations of the Researcher's records or documents, provided that the discrepancies are not as a result of negligence or default by or on behalf of AHDB.

14. REPORTS

- 14.1. The Researcher shall submit the required reports electronically in accordance with Schedule A and Schedule C using an appropriate level of security, on a computer-readable disk/device or if agreed by e-mail.
- 14.1.1. Unless otherwise agreed, reports shall be readable using Microsoft Office or Adobe Acrobat and shall comply with any reasonable requirements of AHDB.
- 14.2. Each required report other than a final report shall unless otherwise agreed:
 - (a) indicate that it is the report for a specified period or in relation to a specified activity and be clearly marked as a draft report if appropriate;
 - (b) list the scientific objectives as set out in the Specification, indicating where amendments have been agreed;
 - (c) indicate in scientific terms the scientific progress achieved since the commencement of the Project or since the last report; how this relates to the overall Project objectives, plus any findings of particular interest;
 - (d) summarise such progress in lay terms;
 - (e) indicate whether the scientific objectives in the Specification are appropriate for the remainder of the Project, giving reasons for any changes, together with financial, staff and time implications;
 - (f) list the milestones for the relevant Project Year as set out in the Schedules, indicating which Project milestones have been met, why any milestones have not been met and the corrective action, and whether the remaining milestones appear realistic;
 - (g) list any outputs, including published papers or presentations and identify any opportunities for exploiting any Intellectual Property Right or technology transfer arising out of the Project and any action taken to protect and exploit such Intellectual Property Right;

- (h) comment briefly on any new scientific opportunities which may arise from the Project, provided that where the Researcher is of the reasonable opinion that such comment may preclude future registration of an intellectual property right, (including by making future intellectual property obvious or non-inventive), then the Researcher may make such report available for confidential use by AHDB, and AHDB shall use reasonable endeavours to ensure that such comment is not made available to the public.
- 14.3. The final report shall be signed and dated by the Researcher's Representative and the Lead Scientist and shall include the following:
- (a) an indication that it is the final report for the Project and be clearly marked as a draft report if appropriate;
 - (b) the Project's Title and Reference as set out in Schedule A; the name of the Researcher and the names of the principal researchers; the total Project costs (the agreed fixed or maximum price); and the Project's Commencement Date and Completion Date, with an explanation of any failure to achieve the Completion Date.
 - (c) an executive summary written in a style understandable to the intelligent non-scientist. This should include the main objectives of the Project; the methods and findings of the research; and any other significant events and options for new work.
 - (d) a scientific report to include:
 - (i) the scientific objectives as set out in the Agreement;
 - (ii) the extent to which the objectives set out in the Agreement have been met;
 - (iii) details of methods used and the Results obtained, including statistical analysis where appropriate;
 - (iv) a discussion of the Results and their reliability;
 - (v) the main implications of the findings;
 - (vi) possible future work, provided that where the Researcher is of the reasonable opinion that such report of possible future work may preclude future registration of an intellectual property right, (including by making future intellectual property obvious or non-inventive), then the Researcher may make such report available for confidential use by AHDB, and AHDB shall use reasonable endeavours to ensure that such comment is not made available to the public;
 - (vii) any action resulting from the research (including protection of Intellectual Property Rights, knowledge transfer).
- 14.3.1. The Researcher shall prior to sending the final report, send a draft thereof in good time to AHDB's Representative, who shall reasonably advise on its acceptability in relation to the scientific and other content and its presentation. The Researcher shall make appropriate amendments and shall submit the final report by the date when this is due to be received.
- 14.3.2. The provision of a final report shall not absolve the Researcher of any obligation to provide any other report.
- 14.4. AHDB reserves the right to return to the Researcher any report which is not, in the reasonable opinion of AHDB, satisfactory either in form or content. In the event that such a report is returned, the Researcher shall promptly submit a

revised report at no additional cost to AHDB which shall at least remedy any deficiencies identified by AHDB.

- 14.4.1. AHDB will not require any results to be omitted from or obscured in a report solely because they are inconsistent with an objective of AHDB.
- 14.4.2. Without prejudice to Condition 15.2, either Party may request that any report be divided into parts and reasonably prohibit or postpone the publication and dissemination of any part without the prior written agreement of such Party, such request and agreement not to be unreasonably denied, withheld or delayed.
- 14.4.3. AHDB may send any report to a third party for expert evaluation subject to requiring appropriate obligations of confidentiality from such third party.
- 14.4.4. A report indicated by the Researcher to be the 'final version' will be deemed to have been accepted by AHDB if no statement in Writing to the contrary is received by the Researcher from AHDB within thirty days of AHDB's receipt of the report. Any such statement may identify specific deficiencies in the report but any such identification shall not be deemed to be exhaustive. For the avoidance of doubt, acceptance shall not be deemed in relation to any draft report.
- 14.5. Reports provided electronically may be password-protected but the password shall be provided to AHDB's Representative so that the report is capable of being copied and/or edited and/or extracts may be obtained by AHDB. No edited version or extract shall be published so as to appear to be the report as provided by the Researcher. For the avoidance of doubt, the inclusion of a statement indicating that the published material is an edited version or an extract shall suffice to avoid such an appearance.
- 14.6. The Researcher hereby grants AHDB a perpetual, irrevocable licence to publish any of the Project reports or an edited version or a summary or an extract thereof on the internet or otherwise and shall ensure that AHDB is informed of any obligation of confidentiality to the Researcher or a third party that would be breached by such publication. AHDB will take the interests of the Researcher and third party in relation to confidentiality and protection of intellectual property into consideration when undertaking such publication, including any information provided on a confidential basis under Conditions 14.2(h) or 14.3(d)(vi).
- 14.6.1. Final reports will usually be published on AHDB's website. When submitting the final report, the Researcher shall indicate any information contained in the report which it considers to be commercially sensitive and AHDB, having in mind Conditions 14.4.2 and 15.5, shall not disclose such information without first having consulted the Researcher.
- 14.6.2. The Researcher may request giving its reasons in Writing that AHDB does not publish any part of any report and AHDB shall take such a request into consideration when publishing such report or an edited version or extract thereof. AHDB may indicate that a part has been omitted at the request of the Researcher (which may be identified) whether or not indicating the reason therefor.

15. PUBLICATION AND DISCLOSURE

- 15.1. Subject to compliance with this Agreement, the Researcher shall endeavour to make information about and results from the Project generally available, and shall in so doing acknowledge in any public statement the financial support of AHDB.
- 15.1.1. AHDB encourages the publication of Results in refereed journals and in third party newsletters, at scientific meetings and conferences, and at meetings for

its levy payers. The proposed publication shall be provided to AHDB's Representative not less than thirty days in advance of the proposed Publication or of the date(s) when intention to Publish or the content of the Publication must be decided, whichever is the soonest, and AHDB within twenty-one days:

- (a) may inform the Researcher in Writing of any changes that it reasonably wishes to be made for any reason and the Researcher shall ensure that such changes are made; or
- (b) acting reasonably may prohibit or conditionally permit such Publication because it contains EU Results or for any other reason and the Researcher shall abide by such prohibition or conditions.

15.1.2. AHDB shall be identified as a funder of the Project in any publication by the Researcher relating to the Project. Relevant AHDB divisions may be named unless otherwise agreed, being specified to be divisions of the Agriculture and Horticulture Development Board.

15.1.3. The AHDB corporate logo may be included in Publications by agreement. Relevant AHDB divisional logos may also be included. The AHDB corporate logo shall not be less prominent than each divisional logo.

15.1.4. Copies of all press releases, published papers and conference proceedings shall be provided, preferably in electronic form, to AHDB's Representative.

15.2. AHDB is under a statutory obligation to publish the EU Results, which may differ from the Results, and to prevent prior dissemination of the EU Results.

15.2.1. Subject to any decision by the competent authorities or a court of the United Kingdom or the European Union, AHDB's determination of what Project results are 'EU Results' shall be conclusive.

15.2.2. The Researcher agrees:

- (a) that AHDB may publish on its website:
 - statements that the Project is to be undertaken and the name of the Researcher;
 - the expected date when the EU Results will be published;
 - the EU Results, which will be available free-of-charge for at least five years.
- (b) that the Researcher will not publish the EU Results or provide them to any third party in advance of publication by AHDB except that it may so provide them with the prior permission in Writing of AHDB subject always to a similar restriction to this being imposed on the recipient.

15.3. Subject to any specific restrictions in these RFA Terms, AHDB shall have the right to disclose, copy or otherwise distribute to the public or use in any way any information arising out of the Project or comprised in any work relating to the Project.

15.4. The Researcher shall:

- (a) inform AHDB immediately if the Researcher is approached by (i) the media about the Project or (ii) anyone about the Project or any matter related to the Project if AHDB has notified the Researcher that such is considered sensitive. AHDB may reasonably require the Researcher not to make any comment in relation to such an approach;
- (b) give notice in accordance with Condition 8 to be received by AHDB at least 10 working days before any planned public statement or other disclosure

relating to the Project, providing details of the information proposed to be disclosed, the reason, and the medium of disclosure. AHDB may reasonably require the Researcher to amend or not to make such statement or disclosure.

- 15.5. Where the carrying out of the Project results in, or materially contributes to, the creation of an Intellectual Property Right which a Party considers may be suitable for commercial exploitation, it shall inform the other Party, which shall make reasonable endeavours to avoid disclosing information that would jeopardise such exploitation.
- 15.6. Nothing in this Agreement is intended to prevent any student from submitting a thesis based on the Results to examiners of a degree-awarding body, the examination of the thesis by the examiners, or the deposit of such a thesis in a library of the Researcher or of the awarding body in accordance with the relevant procedures and regulations.
 - 15.6.1. If examination or accessing of the thesis would disclose confidential Results, the Researcher and awarding body shall require the examiners or readers of the thesis (or their respective employers) to sign non-disclosure undertakings as a condition of receipt of the thesis.
 - 15.6.2. A copy of any thesis shall be provided to AHDB's Representative.

16. PAYMENT

- 16.1. AHDB will not reimburse any increase in the Researcher's costs (including increases in pay rates, national insurance and other employment costs) unless agreed in Writing prior to the Researcher incurring such an increase.
 - 16.1.1. The Researcher may make minor adjustments to its intended expenditure between any headings in any breakdown of intended expenditure contained in this Agreement without reference to AHDB, and shall promptly inform AHDB of such adjustments. In relation to such virement, 'minor' means that the cumulated adjustment for the heading in any Project Year shall not exceed 10% of the intended expenditure for that heading at the beginning of that Project Year.
 - 16.1.2. For the avoidance of doubt, the Researcher may request AHDB to permit higher levels of virement.
- 16.2. All payments shall be paid to the Researcher, which shall hold in trust for AHDB any monies due therefrom to any other person until they are received by that person. The Researcher 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 Researcher for any damages awarded judicially against the Researcher consequent upon the Researcher's compliance with any such instructions.
- 16.3. 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 Agreement.
 - 16.3.1. AHDB will consider and verify invoices in a timely manner.
 - 16.3.2. If AHDB fails to comply with paragraph 16.3.1 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 16.3 after a reasonable time has passed, taking into consideration all relevant circumstances.

- 16.3.3. If any sum due under this Agreement is not paid within 30 days of the Due Date then, without prejudice to the Parties' other rights under the Agreement, that sum shall bear simple interest from the Due Date until payment is made in full, both before and after any judgment, at 2 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.
- 16.3.4. The Researcher is not entitled to suspend the undertaking of the Project as a result of any sum being outstanding.
- 16.3.5. 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 Researcher.
- 16.3.6. AHDB reserves the right to audit any payment for which reimbursement is claimed and the Researcher agrees to co-operate fully in relation to any such audit.
- 16.4. Notwithstanding any other provision in this Agreement and without prejudice to any other available rights or remedies:
- 16.4.1. no more than 90% of the total payment to be made by AHDB to the Researcher under this Agreement shall be due from or payable by AHDB to the Researcher until a final report acceptable to AHDB (acting reasonably) has been received from the Researcher.
- 16.4.2. no part of the final scheduled payment shall be due from or payable by AHDB until a final report acceptable to AHDB (acting reasonably) has been received from the Researcher.
- 16.4.3. in the event that the Researcher fails to deliver an acceptable final report to AHDB in accordance with Schedule A through no fault of AHDB, the Parties shall reasonably agree a delivery date and such a final report shall be delivered to AHDB no later than such date. In the event that no such delivery date is agreed, the delivery date shall be 60 days after the date set out in Schedule A for delivery of the final report as such date may have been amended.
- 16.4.4. in the event that no final report satisfactory to AHDB acting reasonably is received on or before a delivery date set in accordance with Condition 16.4.3, the total sum payable to the Researcher under the Agreement shall be reduced by 5% for each subsequent period of thirty days or part thereof until such a report is received provided that the total of the reductions under this Condition 16.4.4 shall not exceed 50% of such total sum.
- 16.4.5. in the event that an agreed milestone is not achieved or the final claim is not made as agreed, AHDB may reasonably withhold all or part of the monies otherwise due to the Researcher.
- 16.5. AHDB reserves the right to audit any payment for which reimbursement is claimed and the Researcher agrees to co-operate fully in relation to any such audit.
- 16.6. The Researcher shall unless otherwise agreed promptly repay to AHDB any money paid to it either as a result of an administrative error, the application of Condition 16.4.4, or otherwise. This includes (without limitation) situations where an incorrect sum of money has been paid or where payment has been made in error before the Researcher has complied with all conditions attaching to the Funding or consequent upon any reduction in the amount payable coming into effect.

- 16.7. If any part of the monies provided by AHDB remains unspent or uncommitted at the expiry or termination of this Agreement, the Researcher shall ensure that any unspent or uncommitted monies are promptly returned to AHDB, unless otherwise agreed in Writing by AHDB.
- 16.8. Without prejudice to any other right or remedy, AHDB shall have the right to set off any amount owed by the Researcher to AHDB for any reason against any amount payable by AHDB to the Researcher under this Agreement or any other contract.

17. LIABILITY

- 17.1. Neither Party shall be responsible to the other Party (including any researcher forming part of the Researcher) 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 Agreement, 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.
- 17.2. The Researcher shall indemnify AHDB, its employees, agents and contractors from and against the researchers liability for:
- (a) death or personal injury;
 - (b) loss of or damage to property (including property belonging to AHDB for which it is responsible);
 - (c) any losses arising from a breach of DPL; and
 - (d) actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis)
- which arises out of or in connection with the undertaking of the Project or a breach of this Agreement.
- 17.3. The indemnities contained in Condition 17.2 shall not apply to the extent that:
- (a) any loss, damage, injury, cost and expense is caused by the negligent or wilful act or omission of AHDB, its employees, agents or contractors, or by the breach by AHDB of its obligations under the Agreement; or
 - (b) the Researcher is able to demonstrate that the loss, damage or injury arose as a direct result of the Researcher acting on specific instructions in Writing from AHDB.
- 17.4. Each Party shall, with effect from the Commencement Date for such period as necessary to enable the Researcher to comply with its obligations under Condition 17, 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.
- 17.4.1. 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.
- 17.4.2. 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 17.4 shall be shown by the insuring Party to the other Party on request.

- 17.4.3. No Party to the Agreement 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.
- 17.4.4. AHDB may waive the requirement for indemnity and/or insurance, in whole or part, where the Researcher is able to provide adequate assurance that it can meet any liabilities for which indemnities are provided for under Condition 17.2.
- 17.5. The Researcher shall not be liable for damage resulting from any use made by AHDB of the Results except insofar as such claims arise from the negligence or default of the Researcher or its employees, students, representatives, consultants or agents.
- 17.5.1. Any failure by the Researcher to indicate to AHDB any defects or adverse effects which would be reasonably likely to be observable by a researcher of reasonable competence in relation to the Results or to any use of the Results made known to the Researcher shall be deemed to be negligent insofar as such defects or effects are or should reasonably have been known to or suspected by the Researcher.
- 17.6. The Parties shall not be responsible for any failure to perform their 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 any Party's workforce).
- 17.6.1. In the case of an event of force majeure, the Parties shall seek to minimise any adverse effect on the Project, including adjusting milestones where appropriate.
- 17.6.2. If an event of force majeure delays the Project by more than thirty days and this event could reasonably be envisaged to jeopardise the interests of a Party or the Project, AHDB's Representative and the Researcher's Representative shall consider with other interested parties whether the Project and its performance should be amended, postponed or terminated and subject to the agreement of AHDB shall take appropriate action.

18. TERMINATION

- 18.1. The Agreement may be terminated by agreement in Writing between the Parties at any time.
- 18.2. Where AHDB is reasonably of the opinion that the Researcher has a significant conflict of interest relating to the Project, subject to Condition 18.12 AHDB may terminate the Agreement. This Condition shall not apply if any such conflict of interest is capable of being avoided or removed and the Researcher promptly and successfully takes steps at its expense to avoid or remove the conflict.
- 18.3. Where in the reasonable opinion of AHDB the Researcher has failed to:
- (a) progress the Project in accordance with the Specification unless otherwise reasonably agreed between AHDB and the Researcher in Writing, including any agreement under Condition 11.9;
 - (b) fulfil its obligations under Condition 14 or such of Annex 2 or Annex 3 (Intellectual Property Rights) as may apply pursuant to Clause 4.1 or Annex 4 (Data Processing and Protection of Personal Data); or
 - (c) otherwise fulfil its obligations under this Agreement,

AHDB may give the Researcher notice in accordance with Condition 8 specifying the way in which its performance falls short of the requirements of the Agreement, or is otherwise unsatisfactory. Such notice may:

- (a) direct the Researcher to remedy the fault at the Researcher's expense within such time as may be reasonably specified by AHDB; and/or
- (b) withhold or reduce payments to the Researcher, in such amount as AHDB reasonably deems appropriate in the circumstances.

18.3.1. In relation to any significant failure described in Condition 18.3:

- (a) If the failure is not reasonably remediable, AHDB may treat the failure as a material breach of the Agreement.
- (b) If the failure is reasonably remediable and the Researcher 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 Agreement.

18.4. In the event that the Researcher has committed a material breach of the Agreement, subject to Condition 18.12 AHDB may terminate the Agreement. This Condition shall not apply if such breach is capable of remedy and the Researcher 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.

18.5. If any distress, execution or other process is levied upon any of the assets of the Researcher intended to be used for the purposes of the Project, subject to Condition 18.12 AHDB may terminate the Agreement. This Condition shall not apply if the Researcher is able to properly undertake the Project by other means at no additional cost to AHDB.

18.6. If the Researcher 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 Agreement.

18.7. The Researcher 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 18.7, 'control' has the meaning set out in section 1124 of the Corporation Tax Act 2010.

18.7.1. AHDB shall respect any reasonable request by the Researcher to treat information provided under Condition 18.7 as Confidential Information for an appropriate specified period.

18.7.2. Upon completion of any of the matters described in Condition 18.7, AHDB shall consider in the context of the Public Contracts Regulations 2015 whether the continuation of the Agreement with or without reasonable amendment is unlawful and shall take appropriate action which subject to Condition 18.12 may include terminating the Agreement.

18.8. The Researcher 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 18.8(a);
- (d) or is in any case affected by any similar occurrence to any of the above in any jurisdiction,

and subject to Condition 18.12 AHDB may terminate the Agreement.

18.9. If:

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

subject to Condition 18.12 AHDB may terminate the Agreement by giving the Researcher not less than 60 days' notice.

18.10. If AHDB reasonably considers that the Project is not, despite the attainment of any milestones, giving sufficient value to AHDB or is no longer relevant to its interests, subject to Condition 18.12 AHDB may terminate the Project by giving not less than 90 days' notice.

18.11. Subject to Condition 18.12 and pursuant to regulation 73 of the Public Contracts Regulations 2015, AHDB may terminate the contract by giving the Researcher 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 Researcher 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 Researcher 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.

- 18.12. Before giving notice of termination under Conditions 7.6, 18.2, 18.4, 18.5, 18.7.2, 18.8, 18.9, 18.10 or 18.11, AHDB shall consult the Researcher and the Parties shall consider whether any part of the Project could reasonably and usefully continue to be undertaken as an alternative to termination and if so whether the Agreement 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 Agreement, which may include amendments to the Specification and the payments due.
- 18.12.1. In the event that no agreement is reached to continue the undertaking of any or all of the Project within 10 days of AHDB consulting the Researcher under Condition 18.12, AHDB may terminate the Agreement.
- 18.13. Notice of termination of this Agreement shall be given by AHDB to the Researcher in accordance with Condition 8.
- 18.14. AHDB may, during any notice period direct the Researcher:
- (a) to refrain from commencing the Project or any part thereof;
 - (b) to cease work immediately; or
 - (c) to complete, in accordance with this Agreement, any part of the Project, 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 Agreement as is relevant to the completion of such part shall continue to have effect until such part is completed or discontinued.
- 18.15. Termination of this Agreement by AHDB may (unless otherwise specified) have immediate effect.
- 18.16. Except as expressly provided in this Agreement, termination of the Agreement 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 Agreement which is expressly or impliedly intended to continue to have effect after the Agreement has been terminated including the obligations contained in such of Annex 2 or Annex 3 (Intellectual Property Rights) as may apply.
- 18.17. If the Agreement is terminated by AHDB otherwise than as a consequence of a material breach by the Researcher, the Researcher shall be entitled to claim from AHDB reimbursement of expenditure incurred or irrevocably committed by the Researcher necessarily and properly in relation to the performance of this Agreement 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 Researcher shall not exceed the total sum payable for the Project as set out in Schedule B.
- 18.17.1. Any such reimbursement shall be conditional upon the Researcher complying with a duty to mitigate such costs as far as is reasonably practicable.
- 18.18. In the event of termination of this Agreement as a consequence of a material breach by the Researcher:
- (a) AHDB shall not be under any obligation to make any payment to the Researcher 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 Researcher, AHDB may recover the amount of such loss

and/or damage including by set off against any sums due to the Researcher in relation to this Project;

- (b) the Researcher shall promptly refund to AHDB any funds paid by AHDB to the Researcher in accordance with this Agreement and not in the reasonable opinion of AHDB properly spent or properly committed for the purposes of the Project;
- (c) all rights granted to AHDB by the Researcher including any licence to use any Intellectual Property Rights in relation to the Project shall reasonably continue until the Project has been discontinued or completed with a replacement researcher;
- (d) all rights acquired during the Project by the Researcher to use any Intellectual Property Rights provided by AHDB shall cease upon termination;
- (e) notwithstanding any provision to the contrary, if the Researcher has acquired any Intellectual Property Rights by the application of the provisions in Annex 3, in relation to those Intellectual Property Rights:
 - (i) Annex 3 shall apply and shall be deemed to have applied from the Commencement Date;
 - (ii) Annex 2 shall not apply and shall be deemed not to have applied at any time;
 - (iii) subject to any agreement to the contrary, the Researcher shall take all necessary steps to transfer all Intellectual Property Rights that had vested in the Researcher pursuant to Annex 2 to AHDB, which steps shall be at the Researcher's expense; and
 - (iv) the Researcher shall not be liable to AHDB for any use reasonably made by the Researcher of such Intellectual Property Rights prior to the termination of his Agreement.

18.19. In the case of termination of this Agreement pursuant to Conditions 6.2.1(c), 7.6, 18.2, 18.4, 18.5, 18.6, 18.7.2, 18.8, 18.9 or 18.10, without prejudice to any other rights which it may have AHDB reserves the right to:

- 18.19.1. refuse to accept any subsequent delivery of the Research, goods or services which the Researcher attempts to make;
- 18.19.2. purchase from a third party research, goods and services of similar nature and scope to those that were to be supplied under this Agreement;
- 18.19.3. recover from the Researcher any excess cost incurred by AHDB over the price agreed in this Agreement together with all charges and expenses arising from the purchase of such research from the third party; and
- 18.19.4. claim damages for any additional costs, loss or expenses incurred by AHDB which are in any way attributable to the Researcher's failure to perform the Agreement.

18.20. Subject to Condition 18.20.1, to the extent that the Agreement 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 Agreement shall terminate with immediate effect and Condition 18.17 shall apply. The Researcher acknowledges that, other than as set out in this Condition 18.20 (or Condition 18.20.1, if applicable), it shall be entitled to no other payment from AHDB in the event of any such termination.

- 18.20.1. Where a declaration of the type described in Condition 18.20 (a 'Declaration') is stayed or otherwise suspended pending an appeal by AHDB or for any other reason, the Agreement 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 Agreement 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 18.20 shall apply with effect therefrom (provided that the amounts being reimbursed to the Researcher 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 Agreement shall continue in full force and effect for the remainder of the Term. The Researcher 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.
- 18.21. The Researcher shall co-operate fully with AHDB following the termination of the Agreement 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 Project. Upon the termination of the Agreement, the Researcher shall:
- (a) forthwith return to AHDB the originals and any copies of all documents and materials provided in relation to the Project and destroy any electronic copies thereof;
 - (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 provision of the Project;
 - (c) permit AHDB to enter premises and recover any documents, equipment and materials which are the property of AHDB provided AHDB reasonably informs the Researcher 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 Researcher for the purposes of another contract with AHDB.
- 18.21.1. Following termination or expiry of the Agreement otherwise than as a result of a material breach by the Researcher, the Researcher shall be entitled to invoice AHDB for a reasonable fee in respect of the Researcher's time spent on assisting AHDB with any requests for information. Subject to Condition 11.13.1, the Researcher shall be entitled to refuse any requests made more than seven years after the termination or expiry of a Project.

19. TRANSFER OF RIGHTS AND OBLIGATIONS

- 19.1. The Researcher shall not sub-contract, transfer, assign, charge, or otherwise dispose of the Agreement 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.
- 19.1.1. The Researcher shall ensure, if so requested by AHDB, that an assignee enters into a novation agreement with AHDB to perform the Agreement as if the assignee were a Party to the Agreement in lieu of the Researcher.
- 19.2. AHDB may at any time, by giving 30 days' notice to the Researcher in accordance with Condition 8, transfer or assign all or any rights and/or obligations under the Agreement.

20. FREEDOM OF INFORMATION AND DATA PROTECTION

- 20.1. 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 Agreement, which may include Confidential Information, on request to third parties.
- 20.1.1. In the event that either Party receives a request for information relating to the Agreement 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 Project is exempt from disclosure, it shall not be disclosed without the agreement in Writing of the owning Party.
- 20.1.2. 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.
- 20.2. 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.
- 20.2.1. 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 Agreement is not Contractor's Confidential Information. The Disclosing Party shall be responsible for determining whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOI Legislation.
- (a) Notwithstanding any other term of this Agreement, the Researcher hereby gives its consent for AHDB to provide or publish to the general public the Agreement in whole or part, as it may be amended.
- (b) The Researcher shall assist and co-operate with AHDB to enable AHDB to provide or publish this Agreement, 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 Researcher into fair and proper account.
- 20.3. Subject to Condition 3.4.2, the Researcher shall not publicise or permit any other person to publicise the procurement, award, existence or content of this Agreement 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.
- 20.3.1. For the avoidance of doubt, Condition 20.3 does not prevent:
- (a) the disclosure by any Party of this Agreement or a draft thereof to a researcher or sub-contractor that is expected to act with the Researcher in relation to the Project so that it is aware of the relevant terms under which the Researcher will contract with AHDB. Commercially sensitive matter may be redacted. Similar conditions to those imposed on the Researcher under Condition 20.3 shall be imposed on the recipient.
- (b) the disclosure of the RFA Terms or the AHDB Terms to any person.

- 20.4. The Parties shall comply with the obligations contained in Annex 4 in respect of data processing and the protection of personal data within the meaning of the Data Protection Legislation.
- 20.5. Insofar as the Researcher is subject to the FOI Legislation or is the data controller pursuant to the Data Protection Legislation, this Condition 20 and Annex 4 shall have mutual effect mutatis mutandis.

21. DISPUTE RESOLUTION

- 21.1. The Parties shall in good faith attempt to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement.
 - 21.1.1. If any such dispute is not resolved by 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 21.2 and 21.3.
 - 21.1.2. Each Party agrees to pay due consideration to Conditions 21.1 and 21.3 before commencing proceedings to settle a dispute relating to the Project.
- 21.2. The procedure for mediation shall be as follows:
 - 21.2.1. 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 any Party becoming aware that the chosen mediator is unable or unwilling to act, apply to the Centre for Dispute Resolution ('CEDR') to appoint a mediator;
 - 21.2.2. 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;
 - 21.2.3. 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;
 - 21.2.4. 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;
 - 21.2.5. 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.
- 21.3. 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.

22. GENERAL

- 22.1. Subject to any fraudulent misrepresentation, the Agreement including any documents referred to herein and any properly made amendment sets out the entire agreement relating to the Project and supersedes any prior agreement, contract, understanding, proposal, statement or other communication relating to the Project whether oral or written.
 - 22.1.1. In entering into this Agreement 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 Agreement.

- 22.1.2. No terms or conditions endorsed upon, delivered with or contained in the Researcher's quotation or acknowledgement of an Order, specification, delivery note, invoice, proposal or similar document shall form part of the Agreement and the Researcher waives any right which it otherwise might have to rely on such terms and conditions.
- 22.2. Nothing in this Agreement shall be taken as limiting or excluding AHDB's or the Researcher's rights or obligations pursuant to law.
- 22.3. In carrying out the Project, the Researcher shall be acting as principal and not as agent or employee of AHDB. Accordingly:
- 22.3.1. Nothing in this Agreement 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;
- 22.3.2. 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;
- 22.3.3. The Researcher shall not (and shall ensure that any other person engaged in relation to the Agreement shall not) say or do anything that might lead any other person to believe that the Researcher is acting as the agent or employee of AHDB, and
- 22.3.4. Nothing in the Agreement shall impose any liability of AHDB in respect of any liability incurred by the Researcher to any other person but this shall not be taken to exclude or limit any liability of AHDB to the Researcher that may arise by virtue of either a breach of the Agreement or any negligence on the part of AHDB, its staff or agents.
- 22.4. The following requirements shall not apply as between AHDB and a Party who is part of the Crown and the Researcher will not require any sub-contractor that is part of the Crown to comply with provisions similar to those requirements:
- (a) Conditions 4.1.3, 17.2, 17.4 (excluding the requirement in relation to sub-contractors) and 18 (to the extent that it relates to Condition 4.1.3);
- (b) Any other requirement for an indemnity or insurance.
- 22.4.1. The provisions in Condition 22.4 shall apply *mutatis mutandis* in relation to a state department of a member state of the European Union, including any executive agency thereof.
- 22.4.2. 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 22.4.
- 22.5. If any provision of the Agreement 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 Agreement shall continue in full force and effect.
- 22.6. Each right or remedy of either Party under the Agreement is without prejudice to any other right or remedy of that Party whether under the Agreement or not and is in addition to any conditions implied in favour of that Party by law.
- 22.7. 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 Agreement.
- 22.7.1. The delay, failure or neglect of any Party to exercise any right or remedy shall not constitute a waiver of that right or remedy.

- 22.7.2. No waiver shall be effective unless it is communicated in Writing.
- 22.8. The Researcher 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.
- 22.9. This Agreement 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.
- 22.10. The Agreement shall be governed by and construed in accordance with the law of England and Wales.
- 22.10.1. Without prejudice to Condition 21, 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 Agreement or its subject matter or formation (including non-contractual disputes or claims).

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Annex 2 Intellectual Property Rights vested in the Researcher

1. The Researcher shall promptly and fully disclose to AHDB any information, knowledge, idea, design, material, or invention and any expression of any idea created by or for the Researcher in connection with the Project.
- 1.1. The Researcher shall not use the Results for the purposes of any third party nor disclose the Results without the prior written consent of AHDB except as permitted by this Agreement.

Ownership and protection

2. This Agreement does not affect the ownership of any Intellectual Property Right in existence before the commencement of the Project.
3. Subject to the Researcher complying with this Agreement, any prior rights and the rights of third parties, all rights in relation to the Results shall be vested in the Researcher.
- 3.1. Where the Researcher is a Crown body, any copyright shall vest in the Crown provided that the Researcher is authorised on behalf of the Crown to grant licences in accordance with paragraphs 5 and 6 below and does so grant at the time of vesting, failing which copyright shall vest in AHDB.
- 3.2. In the event that the Researcher vests or otherwise disposes of any Intellectual Property Right created in the undertaking of this Project, the Researcher shall ensure that all rights of AHDB in relation to such Intellectual Property Right shall be protected through licensing or otherwise in that vesting or disposal so that AHDB may thereafter make use of such Intellectual Property Right as if it were owned by the Researcher and shall ensure that a similar protective provision shall be incorporated in the event of any further vesting or disposal.
4. The Researcher shall:
 - 4.1. report to AHDB annually during the term of this Agreement and upon reasonable request by AHDB for five years thereafter (in relation to such Results as are capable of or are being exploited) on the progress of commercial exploitation of such Results and on any assignment or licence of such Results;
 - 4.2. do all things and execute at AHDB's expense any documents reasonably required to give effect to such vesting or assignment/licensing in AHDB as is necessary to give effect to paragraph 10 below.

License back

5. The Researcher hereby grants to AHDB subject to any reasonable confidentiality restrictions made known to AHDB in Writing an irrevocable world-wide non-exclusive licence in perpetuity free of any charge or royalty to use the Results for:
 - publication of any report on AHDB's website;
 - disclosure, copying or otherwise distributing to the public or using in any reasonable way any information arising out of the Project or comprised in any work relating to the Project;
 - any purpose set out in Article 3(2) of the Agriculture and Horticulture Development Board Order 2008;and to sub-licence AHDB's rights on the same terms as the licence. AHDB shall inform the Researcher of the granting of any such sub-licence. The Researcher

shall ensure that any such licence shall be binding on any successor, transferee or assignee of the Researcher.

6. Where such use of the Results by AHDB or sub-licensees also requires a licence to use any Intellectual Property Rights of the Researcher other than the Results, the Researcher shall grant such a licence, where free and able to do so and subject to existing third party rights, which shall be royalty-free where such use is for non-commercial purposes, but shall be on reasonable terms to be agreed between the Parties in good faith where such use is for commercial or revenue-generating purposes, which may take into consideration the costs of securing and maintaining protection of the Results, royalty payments and milestone payments.

Exploitation

7. Subject to paragraph 10 below, the Researcher shall:
 - identify and inform AHDB in Writing of any Results which may be suitable for protection;
 - secure and maintain at its own expense such protection for the Results in all or any part of the world as is necessary to promote commercial exploitation of the Results;
 - inform AHDB in Writing of any Results so protected, and of any subsequent assignment or licence of such Results.
8. The Researcher shall identify and inform AHDB in Writing of any Results which it considers suitable for commercial exploitation and shall use reasonable endeavours to pursue or procure or encourage such exploitation for the benefit of the Researcher, AHDB and the Industries.
- 8.1. The Researcher shall provide to AHDB such information as it may reasonably require regarding commercial exploitation of the Results.
9. Subject to paragraph 9.1 below and without prejudice to paragraph 10 below, unless otherwise agreed on fair and reasonable terms the Income from the commercial exploitation of the Results shall, after deduction of allowable costs as described in paragraph 9.2 below, be apportioned between the Parties as follows:
 - AHDB 50%;
 - the Researcher 50%.
- 9.1. Such Income shall be payable for the longer of:
 - the term of any patent arising from or incorporating any of the Results; or
 - the period in which any Know-How arising from the Results and used in any products or services exploited by the Researcher remains secret and substantial.
- 9.2. Such allowable costs shall not include any of the sums referred to in Schedule B and shall be limited to:
 - the registration fees for the registering or maintaining of any rights and any reasonable associated filing and prosecution costs or market evaluation fees in relation to such Results;
 - any legal or other professional fees and costs reasonably incurred in relation to legal proceedings in relation to such Results in any appropriate forum and before any appropriate tribunal in any country and any costs ordered by any such tribunal to be paid by the Parties or any of them;

- any other reasonable cost or expenditure which may be agreed from time to time by AHDB and the Researcher;
 - subject to AHDB's prior agreement, any reasonable relevant marketing, packaging and/or distribution costs, and any relevant experimental development costs including costs of field trials and/or demonstration projects incurred by the Parties.
- 9.3. The Researcher shall have sole responsibility for making any payments due to its employees, students or contractors under any rewards or incentive schemes, whether contractual, ex gratia, or statutory, in relation to the Results, and any such payments shall not be a cost or expenditure liable to be subtracted from any income pursuant to paragraph 9.2 above.
10. The Researcher shall inform AHDB in Writing whether or not it intends to protect or exploit any part of the Results in any part of the world. If the Researcher does not intend to protect or exploit the Results but AHDB desires such protection to be obtained or to carry out such exploitation then AHDB shall be entitled to obtain such protection at its own cost and to have assigned at no charge any such part of the Results which the Researcher has declared in Writing that it does not intend to pursue or no longer has interest in pursuing. The Researcher will be entitled to 25% of the income generated as the result of the exploitation of Intellectual Property Rights by AHDB, after deduction of allowable costs as described in paragraph 9.2 above.
11. The Researcher shall keep at its normal place of business detailed accurate and up to date records and accounts showing details of its commercial exploitation of the Results including the sale of products or services which incorporate the Results, Income received, allowable costs deducted and the amount of licensing revenues received by it in respect of the Results in a format sufficient to ascertain that revenue sharing pursuant to this Agreement has been properly accounted for and apportioned in accordance with this Agreement. During the Project and in respect of any registered Intellectual Property Rights for the duration of the applicable Intellectual Property Right, the Researcher shall make such records and accounts available at premises in the United Kingdom for inspection during business hours by AHDB for the purpose of the verifying the accuracy of any statement or report given by the Researcher to AHDB and to take copies and shall supply AHDB with such explanation as it may request. AHDB shall reasonably inform the Researcher in advance of its intention to undertake such an inspection.
- 11.1. In the case of a Researcher domiciled otherwise than in the United Kingdom, the Parties shall agree reasonable arrangements for such inspection.

Infringement and Violation

12. If the Researcher becomes aware during the term of this Agreement and for two years thereafter that any person alleges that any rights owned by AHDB are invalid or that use of such rights infringes any 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.
13. The Parties shall promptly inform one another and consult on any response if:
- 13.1. a Party becomes aware of any infringement or potential infringement of any Results;
- 13.2. a warning letter or other notice of infringement is received by a Party, or legal suit or other action is brought against a Party, alleging infringement of third party rights relating to the Project.

Annex 3 Intellectual Property Rights retained by AHDB

1. The Researcher shall promptly and fully disclose to AHDB any information, knowledge, idea, design, material, or invention and any expression of any idea created by or for the Researcher in connection with the Project.
- 1.1. The Researcher shall not use the Results for its own purposes or those of any third party nor disclose the Results without the prior written consent of AHDB except as permitted by this Agreement.
- 1.2. To the extent permitted by law, the Researcher shall waive or shall procure the waiver of moral rights in the Results in relation to AHDB and any third party authorised to use the Results by AHDB.

Ownership and Protection

2. This Agreement does not affect the ownership of any Intellectual Property Right in existence before the commencement of the Project.
3. Subject to any prior rights and the rights of third parties, the Researcher hereby vests in AHDB as to copyright and absolutely as to every other property right, all rights in relation to the Results including:
 - the title in any patent in relation to such Intellectual Property Right;
 - the right to apply for and/or register any patent pursuant to the Patents Act 1977;
 - any database rights, for the purposes of the Copyright and Rights in Databases Regulations 1997.
4. The Researcher shall:
 - ensure that all its staff, students and sub-contractors are and will be engaged in relation to the Agreement and the Project on terms which do not entitle any of them to copyright or any other rights in the Results, provided that any student shall be entitled to retain copyright in his thesis;
 - ensure that they are and remain entitled to transfer free from any encumbrances any title and/or rights necessary to effect the vesting required by this Agreement;
 - do all things and execute at AHDB's expense any documents reasonably required by AHDB to give effect to such vesting in AHDB;
 - co-operate with and assist AHDB at AHDB's expense in obtaining and/or enforcing any and all such Intellectual Property Rights.

Commercial Exploitation

5. The Researcher shall identify and inform AHDB in Writing of any Results which they consider suitable for commercial exploitation and shall at AHDB's request and expense use reasonable endeavours to pursue or procure or encourage such exploitation for the benefit of AHDB and the Industries.
6. The Researcher shall identify and inform AHDB in Writing of any Results relating to the Project which may be suitable for patent, copyright, registered design, trademark or other legal protection and shall at AHDB's request use reasonable endeavours to apply for and maintain at AHDB's expense such protection in the name of AHDB in all or any part of the world.

- 6.1. Where AHDB does not wish to protect any such Results in any part of the world but the Researcher desires such protection to be obtained then the Researcher may at its own cost obtain and maintain such protection in the name of AHDB.
7. Subject to paragraph 7.1 below and without prejudice to paragraph 6.1 above, unless otherwise agreed on fair and reasonable terms the income from the commercial exploitation of the Results shall, after deduction of allowable costs as described in paragraph 7.2 below, be apportioned between the Parties as follows:
- AHDB 60%;
 - the Researcher 40%.
- 7.1. Such income shall be payable for the longer of:
- The term of any patent arising from or incorporating any of the Results; or
 - The period in which any Know-How arising from the Results and used in any products or services exploited by the Researcher remains secret and substantial.
- 7.2. Such allowable costs shall not include any of the sums referred to in Schedule B and shall be limited to:
- the registration fees for the registering of any rights in relation to such Results;
 - any legal costs reasonably incurred in relation to legal proceedings in relation to such Results in any appropriate forum and before any appropriate tribunal in any country and any costs ordered by any such tribunal to be paid by the Parties or any of them;
 - any other reasonable cost or expenditure which may be agreed from time to time by AHDB and the Researcher; and
 - subject to AHDB's prior agreement, any reasonable relevant marketing, packaging and/or distribution costs, and any relevant experimental development costs including costs of field trials and/or demonstration projects incurred by the Parties.
- 7.3. The Researcher shall have sole responsibility for making any payments due to its employees or contractors under any rewards or incentive schemes, whether contractual, ex gratia, or statutory, in relation to the Results, and any such payments shall not be a cost or expenditure liable to be subtracted from any Income pursuant to paragraph 7.2 above.

Infringement and Violation

8. If the Researcher becomes aware during the term of this Agreement and for two years thereafter that any person alleges that any rights owned by AHDB are invalid or that use of such rights infringes any 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.
9. The Parties shall promptly inform one another and consult on any response if:
- 9.1. a Party becomes aware of any infringement or potential infringement of any Results;
- 9.2. a warning letter or other notice of infringement is received by a Party, or legal suit or other action is brought against a Party, alleging infringement of third party rights relating to the Project.

Annex 4 Data Processing and Protection of Personal Data

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 Researcher 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, Researcher Personnel and Sub-contractors

- 2.1 The Data is to be shared with the Researcher 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 Researcher 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 Researcher who are engaged in the performance of the Purpose.
- 2.3 The Researcher 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 Researcher 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 Researcher's duties under this agreement;
 - 2.4.2 are subject to appropriate confidentiality undertakings with the Researcher;
 - 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 Researcher 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 Researcher 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 The Researcher shall not appoint any sub-contractor without AHDB's prior written consent, which consent shall not be unreasonably withheld. The Researcher shall remain fully liable for the sub-contractor's compliance with this Agreement and for all its acts or omissions. The Researcher shall provide AHDB with such information regarding the sub-contractor as AHDB may reasonably require.

3. Storage and Protection of Data

- 3.1 To the extent that the undertaking of this Agreement requires the Researcher to process the Data on behalf of AHDB, the Parties agree that AHDB shall be the data controller and the Researcher shall be the data processor (as such terms are defined in the DPL) and the Researcher 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 4 and provided from time to time, unless the processing is prohibited by any applicable laws and the Researcher 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 not transfer or permit the transfer of the Data outside the European Economic Area without AHDB's prior written consent; and
 - 3.1.6 implement and maintain appropriate technical and organisational measures in accordance with this Annex 4 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 4, the Researcher 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 Researcher 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 Researcher shall notify AHDB immediately 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 Researcher shall notify AHDB immediately if it becomes aware of any event that results, or may result, in unauthorised access to Data held by the Researcher 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 Researcher's obligation to notify under clause 4.2 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.or.uk of any suspected or actual breaches of security without undue delay (but in no event later than twelve (12) hours after becoming aware of the breach) 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 (but in no event later than twelve (12) hours) if the Researcher 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 Researcher proposes to take. The Researcher 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 Researcher'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 Researcher's attention. Subject to the Researcher 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 Researcher, the Researcher shall promptly reimburse the reasonable costs thereby incurred by AHDB.

6. Liability

- 6.1 The Researcher 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 Researcher accepts and acknowledges that nothing in this Agreement shall relieve the Researcher 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.

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 Researcher's compliance with its obligations under the DPL and this Agreement and demonstrate its own compliance with the DPL.

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 words '**PROTECT: Personal**' or '**PROTECT: Addressee Only**' 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. Networks must be Best Commercial. Best Commercial is defined as 'Software from a trusted supplier' – e.g. the product has a CESG Claims Tested Mark. CESG is the Information Assurance (IA) arm of GCHQ.

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

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.

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.

Part 2

DISPOSAL OF DATA FORM

It is a condition of this Agreement that the Researcher 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 Researcher 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

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Appendix Specification Details

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

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Draft - Subject to Contract