

CONTRACT FOR THE PROVISION OF GOODS AND/OR SERVICES

Agriculture and Horticulture Development Board

and

...

Contract for the Supply of
[Description – in brief]

Contract date: [DATE]

Commencement date: [DATE]

Completion date (if known): [DATE]

Term: [XXX]

Extension terms: [insert details of notice periods for extension]

DRAFTING NOTE (REMOVE BEFORE CIRCULATING): Please delete as appropriate, the wording in Clause 10 on pages 24/25.

Standard is for AHDB to own the Intellectual Property Rights (IPR) in the Goods and Services.

Non standard is for Supplier to own the IPR and the second, optional clause should be used. If in doubt, please contact Legal.

FORM OF AGREEMENT

THIS CONTRACT IS MADE ON 20....

BETWEEN

Agriculture and Horticulture Development Board, of Agriculture and Horticulture Development Board, Middlemarch Business Park, Siskin Parkway East, Coventry, CV3 4PE ('AHDB')

AND

[NAME OF SUPPLIER] of [address] ('the Supplier')

AHDB and the Supplier are the Parties to the Contract.

WHEREAS

- A. AHDB wishes to acquire the [goods or services] as specified in Schedule A.
- B. The Supplier is willing to supply the Goods and/or Services in accordance with this Contract.

IT IS HEREBY AGREED

1. The Supplier agrees to supply the Goods and/or Services in accordance with this Contract, including Schedule A and the Appendix.
 - 1.1. Unless otherwise specified, the Supplier shall supply the Goods and/or Services to the Principal Office or such other location specified in the Specification or as agreed between the Parties in writing.
2. Subject to the Supplier's compliance with this Contract including meeting any milestones or deliverables (as applicable), AHDB agrees to make payments in accordance with Schedule B.
3. This Contract consists of:
 - this Form of Agreement;
 - Schedule A (Specification, Milestones/Deliverables);
 - Schedule B (Payment and Invoicing);
 - Schedule C (Contacts);
 - Annex 1 (AHDB Terms);
 - Annex 2 (Data Processing and Protection of Personal Data);
 - Appendix to Annex 2 (Cyber Security Requirements_).
 - Annex 3 (Supplier's Tender)
 - Annex 4 (Performance Regime)

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

- 3.1. In the case of any conflict or inconsistency, documents shall take precedence in the order in which they appear in Clause 3.3 above.
- 3.2. Subject to clause 4.2.1, this Contract including the Specification may be amended. Any amendment shall be agreed by the Parties in Writing and shall have no effect unless it has been so agreed.
- 3.3. This Contract and any amendment to it may be executed in counterpart and by the Parties on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one agreement.
4. The Contract shall commence or be deemed to have commenced on 202... ('Commencement Date').
 - 4.1. The Supplier shall complete its performance of the Contract not later than, 202... ('Completion Date').
 - 4.2. Any date in this Contract may be amended in advance by agreement in Writing and any dates that are consequently to be amended shall be similarly agreed.
 - 4.2.1. No amendment to this Contract shall be made unless it complies with Section 74 of the Procurement Act 2023.
 - 4.3. Notwithstanding any act of termination or the achievement of the Completion Date, the relevant provisions of this Contract shall remain in effect insofar as is necessary to ensure the performance of all obligations and the satisfaction of all liabilities and to enable the exercise of all rights under the Contract in each case as such shall exist at the time of such act or the Completion Date as appropriate.
5. Subject to Clause 5.3:
 - 5.1. The maximum total liability of each Party under this Contract shall be three times the amount set out in relation to that Party in Clause 5.2.
 - 5.2. Subject to Clause 5.3 and 9.1 of Annex 2 (Data Protection), in respect of any claim or series of connected claims arising out of the same cause in any year whether arising from negligence, breach of contract or otherwise:
 - (a) the maximum aggregate liability of AHDB shall be the greater of £100,000 or 125% of the cumulative total of the payments identified in Schedule B.
 - (b) the maximum aggregate liability of the Supplier shall be the greater of £1,000,000 or 125% of the cumulative total of the payments identified in Schedule B.
 - 5.3. Nothing in this Contract shall limit either Party's liability for death or personal injury which may arise as a direct result of that Party's negligent act or omission, or for fraud or fraudulent misrepresentation or any liability that cannot be excluded or limited by law.
 - 5.4. Neither party shall be liable for:
 - 5.4.1. any indirect losses;

5.4.2. loss of profits, turnover, savings or business opportunities (in each case whether direct or indirect).

6. For the avoidance of doubt:

6.1. The Supplier’s standard terms and conditions for the supply of goods or services do not apply to this Contract.

6.2. In the event that the Contract applies only to the provision of Goods, the provisions in the Contract relating only to Services shall not apply.

6.3. In the event that the Contract applies only to the provision of Services, the provisions in the Contract relating only to Goods shall not apply.

6.4. Subject to any specific provision to the contrary, this Contract shall not apply to Research.

7. Any amendments to the Annex to this Contract shall be made as sub-clauses below

7.1. There are no amendments to Annex 1.

8. Special Conditions

8.1. Any conditions specified in this Form of Agreement as Special Conditions shall have precedence over any other provision in this Contract.

8.2. There are no Special Conditions.

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

Signature:

Name of signatory:

Position:

Date:, 20....

Signed for and on behalf of the Supplier:

Signature:

Name of signatory:

Date:, 20....

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Schedule A Specification, Milestones/Deliverables

1. Specification

- 1.1. [Include specification/details of the goods/services].
- 1.2. The Specification is based on:
 - the invitation and/or acceptance by AHDB for the supply of the Goods and/or Services, whether by tender or otherwise.
- 1.3. Any amendment to the Specification agreed in accordance with this Contract shall be deemed to be included in this Schedule.

2. Milestones

- 2.1. The following milestones are agreed:

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

OR

3. Deliverables

3.1. [include deliverables and any specific requirements for the agreements, such as dates or delivery times]

4. Security Requirements

4.1. Grading

AHDB has designated the Supplier's security grading as: [INSERT]

4.2. Penetration Testing Requirements

[Include details of any pre-go-live testing requirements. This is linked to the cyber security schedule. Please ensure that you liaise with the security team regarding testing requirements and any service-specific security concerns.]

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Schedule B Payment and Invoicing

1. AHDB shall raise a Purchase Order following its receipt of this Contract signed by the Supplier, the serial number of which shall be notified to the Supplier. AHDB shall raise additional Purchase Orders as and when required, which shall be notified to the Supplier in Writing.
2. Subject to Condition 11.3.1 and any agreed amendment of this Contract in Writing, AHDB will pay the Supplier no more than £..., inclusive of VAT.
- 2.1. Subject to paragraph 2.1.1 below and compliance with this Contract including any milestones or deliverables (as applicable) set out in Schedule A, the Supplier shall invoice AHDB monthly in arrears for the Goods and Services supplied unless such other timeframe is agreed between the parties in Writing and specified in the Purchase Order.
- 2.1.1. The Supplier shall invoice AHDB as follows for the Goods and Services supplied:

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

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

3. Invoices

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

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Schedule C Contacts

1. Each party's contact information is set out below.
2. Unless otherwise agreed, the Primary Contact nominated by a Party shall represent the Party for the purposes of this Contract.

AHDB

3. AHDB's address for correspondence and service (excluding invoices, see Schedule B) will be:
Agriculture and Horticulture Development Board, Middlemarch Business Park,
Siskin Parkway East, Coventry, CV3 4PE
- 3.1. Communications with AHDB shall be marked for the attention of the person named below as AHDB's Primary Contact.
4. AHDB's Primary Contact will be:
...
or such other person as AHDB may nominate in Writing from time to time.
- 4.1. AHDB's Primary Contact 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...).

Supplier

5. The Supplier's address for correspondence and service will be:
...
- 5.1. Communications shall be marked for the attention of the person named below as the Supplier's Primary Contact.
6. The Supplier's Primary Contact will be:
...
or such other person as the Supplier may nominate.
- 6.1. The Supplier's Primary Contact will accept communications by electronic mail (.....@...) and (except for notices and other matters required to be in Writing) by telephone (☎ 0...).
7. The Key Personnel if any in relation to the supply of the Goods and/or Services will be:
...
or such other person as the Supplier may nominate.

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Annex 1 AHDB Terms

**Agriculture and Horticulture Development Board
Terms and Conditions for the Purchase of Goods and Services
version 2025**

<i>Condition</i>		<i>Page</i>
1	Definitions	10
2	Terms	14
3	Undertakings by the Supplier	14
4	Personnel	17
5	TUPE	17
6	Contracted Workers	19
7	Contacts and Communication	20
8	Operation of the Contract	21
9	Sub-contracting	22
10	Intellectual Property Rights	23
11	Payment	24
12	Liability	25
13	Delivery, Acceptance and Rejection	27
14	Termination	28
15	Transfer of Rights and Obligations	34
16	Freedom of Information and Data Protection	34
17	Dispute Resolution	36
18	AUDIT	36

11.1. AHDB (or its authorised representatives) may during Business Hours, access the Supplier's premises and records as may be reasonably required in order to:

11.1.1. fulfil any legally enforceable request by any regulator or supervisory authority;

11.1.2. check the accuracy of the fees or charges paid or payable pursuant to this Contract;

11.1.3. identify suspected fraud; or

- 11.1.4. audit and take copies of relevant records as necessary to verify the Supplier's compliance with the terms and conditions of this Contract.
- 11.2. AHDB shall provide reasonable written notice of its intention to conduct an audit under Condition 18.1 ,unless such audit is conducted in respect of a suspected breach, criminal activity or fraud, in which event no notice is required.
- 11.3. AHDB shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Supplier or performance of its obligations under this Contract.
- 11.4. AHDB shall ensure that any third party appointed in respect of the audit shall:
- 11.4.1. be bound by written confidentiality obligations no less onerous than those set out in this Contract; and
- 11.4.2. not be a competitor of the Supplier.
- 11.5. The Supplier shall:
- 11.5.1. provide AHDB and its representatives with all reasonable co-operation, access and assistance in relation to each audit; and
- 11.5.2. allow AHDB and its representatives to meet with the Supplier's personnel and ensure that the Supplier's personnel provide all explanations reasonably necessary to perform the audit effectively.
- 11.6. Each party shall bear its own costs and expenses incurred in respect of compliance with their obligations under this Condition 18, unless the audit identifies a material breach by the Supplier, in which case the Supplier shall reimburse AHDB for all its reasonable costs incurred in the course of the audit.
- 11.7. If an audit identifies that:
- 11.7.1. the Supplier has failed to perform its obligations under this Contract, the Supplier shall take the necessary steps to comply at no additional cost to AHDB;
- 11.7.2. AHDB has overpaid any charges or payment to the Supplier pursuant to this Contract, the Supplier shall pay to AHDB the amount overpaid within five (5) business days of the date of receipt of an invoice or notice to do so; and
- 11.7.3. AHDB has underpaid any Charges, the Customer shall pay to the Supplier the amount of the under payment within fourteen (14)

calendar days from the date of receipt of an invoice or notice to do so.

GENERAL

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1. DEFINITIONS

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

<i>Word Expression</i>	<i>or Meaning</i>
Academic Institution	A body recognised by the UK or an EU member state within which it is situated as being constituted for the principal purposes of academic research and tertiary education. Unless otherwise specified any employee, Student, agent and consultant thereof relevant to the supply of the Goods and Services shall be deemed to be part of the Academic Institution. For the avoidance of doubt a subsidiary company or other affiliate of an Academic Institution shall not be an Academic Institution for the purposes of this Contract unless it is a body constituted <i>per se</i> for the principal purposes of academic research and tertiary education;
AHDB	The Agriculture and Horticulture Development Board or any subsidiary thereof;
AHDB Stores	AHDB Stores, Agriculture and Horticulture Development Board, Middlemarch Business Park, Siskin Parkway East, Coventry, CV3 4PE
AHDB Terms	AHDB's Terms and Conditions for the Purchase of Goods and Services (the content of this Annex);
Annex	This annex incorporated into this Contract under Clause 3 in the Form of Agreement;
Appendix	an appendix incorporated into this Contract under Clause 3 in the Form of Agreement;
Associated Person	an associated person as defined in section 26(4) of the Procurement Act 2023;
Bribery Act	The Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any relevant guidance or codes of practice issued by a government department concerning the legislation.
Business Hours	Monday to Friday between 9am and 5pm excluding Public and Bank holidays in England and Wales;
Commencement Date	The date set out in Clause 4 as it may have been amended;
Completion Date	The date set out in Clause 4 as it may have been amended in accordance with this Contract;
Confidential Information	Any information which has been designated as confidential by a Party in writing or that ought to be reasonably 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.

Confidential Information does not include information which:

- (a) is public knowledge at the time of disclosure (otherwise than by breach of any obligation of confidentiality);
- (b) is in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party who lawfully acquired it without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information;

Connected Person	a connected person as defined in in paragraph 45 of Schedule 6 of the Procurement Act 2023;
Contract	This written contract between AHDB and the Supplier as described in Clause 4;
Contracted Worker	A person complying with the criteria set out in Condition 6.1;
Contractor's Confidential Information	For the purposes of Condition 16.2.1 only, any information, which has been designated as confidential by AHDB or the Supplier in Writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
DDP	'Delivered Duty Paid' (as defined in the Incoterms® rules 2010);
Data Protection Legislation or DPL	All applicable data protection and privacy legislation in force from time to time including in the UK, the Data Protection Act 2018, Data (Use and Access) Act 2025 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 UK General Data Protection Regulation (EU) 2016/679 (UK GDPR) and/or any corresponding or equivalent national laws or regulations, including any amendment or update thereof and/or any new or updated laws and regulations relating to data protection including any judicial or administrative interpretation thereof and any guidance, guidelines, recommendations, codes of practice, approved codes of conduct or approved certification mechanisms issued by the Information Commissioner, any replacement body or other relevant government department or supervisory authority in relation to such legislation from time to time;
Debarment List	the debarment list kept by a Minister of the Crown pursuant to

		section 62(3) of the Procurement Act 2023;
Discretionary Exclusion Grounds		the discretionary exclusion grounds set out in Schedule 7 of the Procurement Act 2023;
Due Date		Has the meaning given to it in Condition 11.10;
FOI Legislation		The Freedom of Information Act 2000 and similar legislation, as set out in Condition 16.1;
Form of Agreement	of	The agreement on the supply of goods and/or services, to which the Schedules, Annex, Appendix and other documents are attached;
Goods		Any goods, being tangible moveable items, as described in the Specification that are agreed by this Contract to be purchased by AHDB from the Supplier whether or not in relation to the supply of Services;
Industry		The beef and sheep industry in England; the cereal industry in the United Kingdom; the milk industry in Great Britain; the oilseed industry in the United Kingdom; the pig industry in England, in each case as defined in the Agriculture and Horticulture Development Board Order 2008, as updated or amended from time to time;
Intellectual Property Right		Any patent, utility model, invention, trade mark, service mark, logo, design right (whether registrable or otherwise), application for any of the foregoing, copyright, database right, domain name, Know-How, trade or business name, moral right and other similar right or obligation whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
Key Personnel		Any person identified by name or job title as Key Personnel by the Supplier in Schedule C. If no Key Personnel is identified therein, all references to Key Personnel in this Contract shall have no effect;
Know-How		All information not in the public domain held in any form (including that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods);
Latent Defect		Any hidden flaw, weakness or imperfection in the Goods which AHDB could not discover by reasonable inspection at the time of its receipt of the Goods other than any such defect that had been made known to AHDB by the Supplier in Writing prior to the delivery of the Goods;
Mandatory Exclusion Grounds		the mandatory exclusion grounds set out in Schedule 6 of the Procurement Act 2023;
Party		Each of AHDB and the Supplier;

Primary Contact	A person nominated as such from time to time by a Party in accordance with Schedule C;
Principal Office	AHDB, Middlemarch Business Park, Siskin Parkway East, Coventry, CV3 4PE;
Procurement Challenge	any credible and substantive legal or procurement challenge of any nature brought in respect of alleged breaches of the Procurement Act 2023 and / or any decision or judgment by a court setting aside this Contract or declaring it to have been awarded in breach of the Procurement Act 2023.
Purchase Order	AHDB's order for the supply of Goods and/or Services under the Contract;
Research	Any experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts and/or any planned research or critical investigation (including any critical topic review) aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services;
Schedule	A schedule incorporated into this Contract under Clause 3;
Services	Any services as described in the Specification that are agreed by this Contract to be purchased by AHDB from the Supplier whether or not in relation to the supply of Goods;
Special Condition	Any provision so specified in the Form of Agreement;
Specification	The specification provided in Schedule A, as it may have been amended;
Supplier	The natural or legal person named in the Form of Agreement as the Supplier. For the avoidance of doubt: <ul style="list-style-type: none"> • the Supplier may comprise more than one person, and • a person undertaking activities on behalf of the Supplier shall not comprise part of the Supplier unless he is named as such in the Form of Agreement;
Writing	Writing on paper, electronic mail, or any other medium that (a) allows information to be addressed to the recipient, (b) enables the recipient to store the information in a way accessible for future reference, and (c) allows the unchanged reproduction of the information stored.

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

1.2.1. to the Supplier or to AHDB shall, where appropriate, be references to any lawful successor, assignee or transferee;

1.2.2. to the Supplier shall refer to each person constituting the Supplier and where the Supplier consists of more than one person, subject to any allocation of specific work concerning any part(s) of the Contract to a person or any agreement otherwise, the obligations and liabilities of those persons in relation to the Contract shall be joint and several;

1.2.3. to Clauses are references to the clauses of the Form of Agreement, to Conditions are references to the terms and conditions of the AHDB Terms and

to paragraphs are references to paragraphs in the referring Appendix or Schedule unless otherwise indicated.

- 1.2.4. to 'person' or 'third party' include any individual, body corporate, unincorporated association, company, corporation, firm, partnership, joint venture, public authority, organisation, institution, trust or agency and any other person whether or not having a separate legal personality and shall include subject to these Conditions the successors, transferees and assigns of such a person;
- 1.2.5. to one gender include all genders;
- 1.2.6. to the singular include the plural and vice versa;
- 1.2.7. to 'includes' or 'including' shall mean without limitation;
- 1.2.8. to 'contract' includes any relevant contract however described therein;
- 1.2.9. to any statute, statutory provision or other instrument, is a reference to it as from time to time amended, extended, consolidated or re-enacted and includes all instruments, orders or regulations made under, or deriving validity from such instrument and any instrument having a similar purpose in the relevant part of the United Kingdom.
- 1.3. Any undertaking by a Party not to do an act or thing shall be deemed to include an undertaking not to permit or suffer such act or thing to be done by another person.
- 1.4. The headings and indexes in this Contract are inserted for convenience only and shall be ignored in construing the Contract.

2. TERMS AND CONDITIONS

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

3. UNDERTAKINGS BY THE SUPPLIER

- 3.1. The Supplier undertakes that:
 - 3.1.1. it has taken reasonable care in developing and/or assessing the Specification, and believes after due consideration that it together with any of its agents and sub-contractors can fully carry out the necessary work;
 - 3.1.2. to the best of its knowledge and belief, the following shall not constitute an infringement of the Intellectual Property Rights of any third party:
 - (a) the supply of the Goods and Services;
 - (b) appropriate use by AHDB of the Goods and Services, which shall take into due consideration any relevant advice on such use that the Supplier may provide.

- 3.1.3. it shall take reasonable steps to ensure that there is no conflict of interest as would be likely to prejudice its impartiality and objectivity in supplying the Goods and Services and that upon becoming aware of any such conflict of interest it shall promptly (and in any case within seven days) inform AHDB in Writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as AHDB may reasonably require.
- 3.1.4. the Goods and the Services shall:
- (a) not be changed without the prior consent in Writing of AHDB; and
 - (b) conform to the Specification, which the Supplier confirms to be accurate, complete in all material respects and not misleading.
- 3.1.5. the Goods shall:
- (a) be of the best available design, of the best quality and workmanship subject to the Specification and in any case without fault or defect (including Latent Defect);
 - (b) conform with all Laws applicable to such Goods as regards the design, manufacture, quality, packaging, storage, transportation, delivery, labelling, health, safety and environmental standards and use of such Goods which are in force at the time of supply;
 - (c) be complete and fully operational and shall be delivered within the agreed contract price with all parts (including all parts that are not specified in the Specification but which are required for proper operation and also the usual guards, safety devices, special tools etc.);
 - (d) be accompanied by all appropriate information, warnings, instructions and documentation in relation to the safe use, handling, storing, operation, consuming, transportation and disposal of any Goods or parts or materials including paper and/or electronic operation manuals or those available via functioning web link, in particular in relation to hazardous materials which will be clearly identified to AHDB;
 - (e) be free from chlorofluorocarbons, asbestos, dioxins, halons and radiation above natural background levels and any other similarly hazardous substances unless specifically agreed by AHDB; and
 - (f) comply with any applicable national and international quality assurance standards from time to time published under which the Supplier is approved; and/or as reasonably requested by AHDB.
- 3.1.6. the Services shall be performed with all reasonable care, skill and due diligence and in accordance with best professional, technical and scientific knowledge and practice; legislative requirements; generally recognised commercial practices and standards for similar services; and the agreed service levels or key performance indicators set out in Schedule .
- 3.1.7. it shall at all times during the duration of this Contract and at its own expense:
- (a) maintain all licences and consents necessary for the performance of its obligations under the Contract;
 - (b) adopt safe working practices and shall not in the performance of the Contract in any manner endanger the safety of or unlawfully or unreasonably interfere with the convenience of any other person, including employees and/or contractors of AHDB;

- (c) ensure that, in performing its obligations under the Contract, it does not cause any disturbance or damage to the operations and property at the relevant site;
 - (d) comply with AHDB's 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 Supplier 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 Goods or Services (which notification shall not release the Supplier from any liability and/or obligations in respect of such breach, hazard or issue);
 - (g) co-operate with AHDB in all matters relating to the Goods and Services.
- 3.1.8. no Mandatory Exclusion Grounds or Discretionary Exclusion Grounds (except so far as notified to AHDB in writing) exist in respect of the Supplier or any of its Connected Persons, Associated Persons or sub-contractors (where the sub-contractors are engaged in performance of any part of this Contract).
- 3.1.9. neither it nor any of its Connected Persons, Associated Persons, or sub-contractors (where the sub-contractor is engaged in performance of any part of this Contract) is on the Debarment List or aware of any investigation under section 60 of the Procurement Act 2023 (Investigation of supplier: exclusion grounds).
- 3.1.10. it shall promptly notify AHDB in writing:
- (h) where it or any of its Connected Persons, Associated Persons or (where they are engaged in performance of any part of this Contract) sub-contractors is added to the Debarment List or where it becomes aware of any investigation under section 60 of the Procurement Act 2023 (Investigation of supplier: exclusion grounds) that could give rise to them being added to the Debarment List; and
 - (i) where any Mandatory Exclusion Ground or Discretionary Exclusion Ground applies in respect of the Supplier or any of its Connected Persons, Associated Persons or (where the sub-contractor is engaged in performance of any part of this Contract) sub-contractors..
- 3.2. During the term of this Agreement, the Supplier shall:
- 3.2.1. not engage in any activity, practice or conduct which would constitute or facilitate fraud, financial crime or fraudulent activity, including (but not limited to) a fraud offence under the Economic Crime and Corporate Transparency Act 2023 (a "**Fraud Offence**");
- 3.2.2. promptly notify AHDB (in writing) if it becomes aware of any suspected or actual Fraud Offence relating to this Agreement, or has reason to believe that it has received a request or demand to commit a Fraud Offence in connection with the performance of this Agreement;
- 3.2.3. if requested, co-operate with and provide reasonable assistance to AHDB to enable AHDB to investigate, or respond to any requests from a relevant government department or agency to investigate, an alleged Fraud Offence; and

- 3.2.4. ensure that any of its agents, consultants, contractors, subcontractors or other persons engaged in performance of the Supplier's obligations under this Agreement do so only on the basis of a written contract which imposes on such person terms equivalent to those imposed on the Supplier in this Clause.
- 3.2.5. The parties agree that a breach of this Condition **Error! Reference source not found.** shall be considered a material breach of this Agreement.
- 3.3. The undertakings given under this Condition 3 shall survive any performance, acceptance or payment pursuant to, or any expiry or termination of, the Contract and shall be extended to any repaired or replacement Goods or substituted or remedial Services provided by the Supplier.

4. PERSONNEL

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

5. TUPE

- 5.1. The Supplier, on behalf of itself and any future provider of services to AHDB, shall indemnify 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).
- 5.2. The Supplier shall not:
- (a) at any time during the Contract, including any extension, move any staff into the undertaking or relevant part of the undertaking, who do not meet the

- standards of skill and experience or who are in excess of the number required for the purposes of the Contract; or
- (b) make any substantial change in the terms and conditions of employment of any staff engaged in supplying the Goods and Services that is inconsistent with the Supplier's established employment and remuneration policies.
- 5.2.1. Where, in the reasonable opinion of AHDB, any change or proposed change in the staff employed in the undertaking or relevant part of the undertaking, or any change in the terms and conditions of employment of such staff would be a material breach of Condition 5.2, AHDB shall have the right:
- (a) to make representations to the Supplier against the change or proposed change;
- (b) to give notice to the Supplier in accordance with Condition 7 requiring it to remedy the breach within 30 days; and
- (c) if the Supplier has not remedied the breach by the end of the period of 30 days to the satisfaction of AHDB acting reasonably, to terminate the Contract in accordance with Condition 14.4.
- 5.2.2. If, after due consultation with the Supplier, AHDB reasonably requires and gives the Supplier notice in accordance with Condition 7 that any person is to be removed from involvement in the supply of the Goods and Services, the Supplier shall take reasonable steps to comply with such notice.
- 5.3. Where, in the reasonable opinion of AHDB, the Transfer of Undertakings (Protection of Employment) Regulations 2006 are likely to apply on the termination or expiry of the Contract, the Supplier shall promptly provide on request accurate information relating to the staff who would be transferred under the same terms of employment under those Regulations, including in particular:
- (a) the number of staff who would be transferred, but with no obligation on the Supplier to specify their names;
- (b) in respect of each of those members of staff their age, sex, salary, length of service, hours of work, overtime hours and rates, any other factors affecting redundancy entitlement and any outstanding claims arising from their employment;
- (c) the general terms and conditions applicable to those members of staff, including probationary periods, retirement age, periods of notice, current pay agreements, working hours, entitlement to annual leave, sick leave, maternity and special leave, terms of mobility, any loan or leasing schemes, any relevant collective agreements, facility time arrangements and additional employment benefits.
- 5.3.1. The Supplier shall indemnify AHDB against any claim made against AHDB at any time by any person in respect of any liability incurred by AHDB arising from any deficiency or inaccuracy in information which the Supplier is required to provide under Condition 5.3.
- 5.3.2. AHDB shall take reasonable precautions to ensure that the information referred to in Condition 5.3 is given only to suppliers who have qualified to tender for the future provision of the supply of the Goods and Services and similar goods and services.
- 5.3.3. AHDB shall require any supplier to whom such information is given:
- (a) to treat the information in confidence,

- (b) not to communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by AHDB, and
- (c) not to use it for any other purpose.

6. CONTRACTED WORKERS

- 6.1. This Condition 6 applies only in relation to a person satisfying all of the following criteria (a 'Contracted Worker'):
 - 6.1.1. The person must be contracted to undertake Research for or supply goods or services to AHDB for six months or more, directly by this Contract or consequent upon an obligation in this Contract upon the Supplier;
 - 6.1.2. The person must not be on the payroll of AHDB or any UK government department (including a devolved administration) or any agency thereof;
 - 6.1.3. The person must be or have been liable to pay UK income tax and/or national insurance contributions at the appropriate time;
 - 6.1.4. The rate of payment (calculated based on a 7.5 hours working day, and excluding reimbursement of expenses necessarily incurred and VAT) for the provision of such services must be £245 or more per day.
- 6.2. Insofar as the Contracted Worker is liable to be taxed in the UK in respect of consideration received in relation to this Contract, he shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
- 6.3. Insofar as the Contracted Worker is liable to National Insurance Contributions (NICs) in respect of consideration received in relation to this Contract, he shall at all times comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
- 6.4. AHDB may, at any time during the term of this Contract, request the Contracted Worker to provide within a specified period information which demonstrates how he complies with Conditions 6.2 and 6.3 above or why those Conditions do not apply to him. For the avoidance of doubt, this does not oblige the Contracted Worker to disclose the amount of income tax or NICs paid.
 - 6.4.1. AHDB may supply any information which it receives under this Condition 6.4 to the Commissioners of His Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 6.5. Insofar as the Supplier is a Contracted Worker or the Supplier contracts directly or through any other person with any Contracted Worker for the supply of Research or goods or services in relation to the satisfaction of its obligations under this Contract, this Condition 6 shall apply in relation to each Contracted Worker.
 - 6.5.1. The Supplier shall ensure that such contracts:
 - (a) contain obligations and other provisions equivalent to those in this Condition 6 so that AHDB is able to take action in relation to each Contracted Worker; and
 - (b) ensure that any information provided by a Contracted Worker to any other person in relation to the operation of this Condition 6 may lawfully be provided to AHDB and be provided by AHDB to the Commissioners of His Majesty's Revenue and Customs.
- 6.6. Subject to Condition 14.12, AHDB may terminate this Contract if:

- (a) in the case of a request mentioned in Condition 6.4, the Contracted Worker:
 - (i) fails to provide information in response to the request within any specified period or, if no period is specified, within a reasonable time, or
 - (ii) provides information which is inadequate to demonstrate either how he complies with Conditions 6.2 and 6.3 above or why those Conditions do not apply to him; or
 - (b) AHDB receives information which demonstrates that, at any time when Conditions 6.2 and 6.3 apply to the Contracted Worker, he is not complying with those Conditions.
- 6.6.1. Amendments to the Contract under Condition 14.12 may exclude the Contracted Worker but AHDB shall have no liability to the Supplier in relation to any liability thereby falling upon the Supplier.

7. CONTACTS AND COMMUNICATION

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

Notices

- 7.4. Any notice required to be given shall:
 - 7.4.1. be in written form and signed by or on behalf of a duly authorised officer of the Party giving notice;
 - 7.4.2. be deemed duly served if:
 - (a) given to the Representative of the Party to be served with the notice (the 'receiving Party'), or
 - (b) left at, or sent by pre-paid first class post (or by air mail if one Party is outside the UK) or by email to, the address of the receiving Party specified in Schedule C.
 - 7.4.3. be deemed to have been received by the receiving Party:
 - (a) on the first Working Day after the day on which it is given to the Representative of, or left at the address of, that Party;
 - (b) on the third Working Day after the day on which it is posted save that if the notice is sent by air mail, it shall be deemed to have been so received on the fifth Working Day after the day on which it is posted;
 - (c) on the same Working Day as transmission provided that no out of office response was received and the email was sent between 09:00 and 17:30; or the first Working Day after the day on which the email is transmitted if sent outside of normal working hours (being 09:00 to 17:30 for these purposes).

- 7.5. In proving the serving and receipt of a notice it shall be sufficient to prove that:
- (a) the notice was given or left in accordance with Condition 7.4.2; or
 - (b) the envelope containing the notice was correctly addressed and was posted; or
 - (c) subject to 7.6, the email was correctly addressed and a copy of the sent email with a date and time stamp can be provided.
- 7.6. Where an out-of-office response is received by the sender, the sender must ensure that it complies with any instructions detailed within the out-of-office response.

8. OPERATION OF THE CONTRACT

- 8.1. The Supplier shall properly manage and monitor the supply of the Goods and Services and inform AHDB in Writing without undue delay if any aspect of the Contract is not being or is unable to be performed.
- 8.1.1. The Supplier shall provide all the facilities necessary to supply the Goods and Services.
- 8.1.2. Any materials or processes used in connection with the supply of the Goods and Services shall be in accordance with standards set out in the Contract.
- 8.2. The Supplier shall supply the Goods and Services to AHDB in accordance with the Specification and ensure that its employees, agents and sub-contractors act with reasonable skill, care and diligence.
- 8.3. The Supplier shall take reasonable steps to follow best professional or good industry practice and ensure compliance with all applicable laws, codes of practice, guidelines and any Standards set out in the Specification, by itself and its servants, employees, agents and sub-contractors.
- 8.4. The Supplier confirms that:
- 8.4.1. it will comply with best practice and relevant provisions, whether statutory or otherwise, relating to health and safety at work;
 - 8.4.2. it will comply with the DPL;
 - 8.4.3. it will not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010;
 - 8.4.4. it will comply with the Bribery Act.
- 8.5. The Supplier confirms that in entering into the Contract it has not:
- 8.5.1. colluded with any competitor in formulating its offer to supply the Goods and Services except insofar as any such competitor is a named participant in a consortium in relation to supply of the Goods and Services of which the Supplier is also a participant;
 - 8.5.2. canvassed any person associated with AHDB or otherwise sought improperly to improve its competitive position in relation to this Contract;
 - 8.5.3. done or omitted to do anything that would result in a breach of the Bribery Act 2010.
- 8.6. Except to the extent permitted in this Contract, the Supplier shall treat all Confidential Information belonging to AHDB as confidential and shall not disclose any such Confidential Information to any other person without the prior consent in Writing of AHDB, except under an obligation of confidentiality upon such

persons and to such extent as may be necessary for the performance of the Supplier's obligations under the Contract.

- 8.6.1. Each Party may discuss the Contract and its performance with any adviser or consultant subject to appropriate conditions of confidentiality.
- 8.7. The Supplier shall promptly and in any case not later than one week of its becoming aware of any circumstances likely to adversely affect the supply of the Goods and Services bring these matters to the attention of AHDB in Writing and the Primary Contacts shall reasonably agree any consequential action that shall be taken.
- 8.8. Each Party shall, subject to being informed reasonably in advance, attend all meetings specified in the Contract or otherwise reasonably arranged by either Party for the discussion of matters concerned with the supply of the Goods and Services.
- 8.9. At any time prior to delivery of the Goods to AHDB or completion of the Services AHDB (or its nominee) shall have the right to inspect and test the Goods or inspect the work being carried out in performance of the Services. If at the date of the inspection the Goods are located or the Services are being performed at the premises of the Supplier or its associated companies or sub-contractors, the Supplier shall procure that AHDB or its nominees have access on reasonable notice and shall ensure that the inspectors shall receive such information and assistance as they reasonably request in relation to their inspection or testing of the Goods or Services.
- 8.9.1. If the results of such inspection or testing cause AHDB to be of the opinion (acting reasonably) that the Goods and/or Services do not conform or are unlikely to conform to the Specification, or that the Goods and/or Services may not be delivered to time, AHDB may at its option:
- 8.9.1.1. inform the Supplier in Writing, following which the Supplier shall immediately take such action as is necessary to ensure conformity or timely delivery as the case may be;
 - 8.9.1.2. reject the Goods or Services; or
 - 8.9.1.3. require and witness further testing and inspection.
- 8.9.2. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and the Services and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.

9. SUB-CONTRACTING

- 9.1. Without prejudice to the provisions of Annex 2, where a Supplier enters into a Sub-Contract for the purpose of performing its obligations under the Contract, it shall ensure that provisions are included *mutatis mutandis* in the Sub-Contract which:
- (a) have the same effect as Conditions 11.10, 11.10.1 and **Error! Reference source not found.**; and
 - (b) require the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect *mutatis mutandis* as Conditions 11.10, 11.10.1 and **Error! Reference source not found.**

In this Condition 9.1, 'Sub-Contract' means a contract between two or more suppliers, at any stage of remoteness from AHDB in a subcontracting chain,

made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

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

10. INTELLECTUAL PROPERTY RIGHTS

DRAFTING NOTE (REMOVE BEFORE CIRCULATING): AHDB OWNS IPR CREATED AS PART OF PRODUCT/SERVICES

- 10.1. Unless otherwise agreed, all Intellectual Property Rights arising from the supply of the Goods and/or Services to AHDB together with any other information, knowledge, idea, design, material, or invention and any expression of any idea created by the Supplier (or its agents or employees) shall be the exclusive property of AHDB.
- 10.2. The Supplier shall fully disclose all such arising Intellectual Property Rights to AHDB and shall not use them for its own purposes or those of any third party nor disclose them without the prior written consent of AHDB. The Supplier at the request and expense of AHDB will take all measures which may be necessary to vest ownership of such Intellectual Property Rights in AHDB or its nominee and shall assist AHDB in establishing and protecting such Intellectual Property Rights, including if necessary doing all such acts and executing all such documents as AHDB reasonably deems necessary. To the extent permitted by applicable Laws, the Supplier shall waive or shall procure the waiver of moral rights in such Intellectual Property Rights.
- 10.3. The Supplier shall:
 - 10.3.1. ensure that each person who is engaged in relation to the Contract is engaged on terms which do not entitle him to copyright or any other arising Intellectual Property Rights;
 - 10.3.2. ensure that it is and remains entitled to transfer free from any encumbrances any title and/or rights necessary to effect any vesting required by this Contract;
 - 10.3.3. co-operate with and assist AHDB in obtaining and/or enforcing any and all rights in such Intellectual Property.
- 10.4. If a claim is made that the possession or use by AHDB of any Goods or Services supplied under this Contract infringes the Intellectual Property Rights of a third party, or in the Supplier's reasonable opinion such a claim is likely to be made, the Supplier shall promptly and at its cost either:
 - 10.4.1. obtain for AHDB the right to continue using the materials which were the subject of the claim; or

- 10.4.2. modify or replace the infringing part of the materials so as to avoid the infringement or alleged infringement but in such a way that it complies with the representations and warranties in this Contract.
- 10.5. If the Supplier becomes aware that any person alleges that any Intellectual Property Rights owned by or to be vested in AHDB are invalid or that use of such Intellectual Property Rights infringes any Intellectual Property Rights of another party then it shall as soon as reasonably practicable give AHDB particulars thereof in Writing and shall make no comment or admission to any third party in respect thereof.
- 10.6. All AHDB's Intellectual Property Rights and all materials, products, samples, documents and information provided by AHDB to the Supplier (including copyright therein) shall remain the property of AHDB. Their use by the Supplier shall be allowed only within the limits of the purpose of this Contract or another written contract between the Parties.
- 10.7. This Contract shall not affect the ownership of any Intellectual Property Rights in existence before the Commencement Date.
- 10.7.1. For the avoidance of doubt, Condition 0 shall not apply in relation to pre-existing Intellectual Property Rights in software that has been modified at AHDB's expense to enable the performance of this Contract. Any use of such modified software by the Supplier other than at the request of AHDB shall be subject to the prior agreement of AHDB in Writing.

[DRAFTING NOTE (REMOVE BEFORE CIRCULATING): ALTERNATIVE CLAUSE - SUPPLIER OWNS IPR CREATED AS PART OF PRODUCT/SERVICES. CONSULT LEGAL BEFORE USE.]

- 10.1. AHDB acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Services. Except as expressly stated in this Contract, this Contract does not grant AHDB any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services.
- 10.2. The Supplier hereby grants to AHDB during the term of this Contract, a non-exclusive, royalty-free licence to use the Intellectual Property Rights in order to receive and use the Services pursuant to this Agreement.
- 10.3. The Supplier confirms that it has all the rights in relation to the Services and associated Intellectual Property Rights that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Contract.
- 10.4. This Contract shall not affect the ownership of any Intellectual Property Rights in existence before the Commencement Date.

11. PAYMENT

- 11.8. AHDB will not reimburse any increase in the Supplier's costs (including increases in pay rates, national insurance and other employment costs) unless agreed in writing prior to the Supplier incurring such costs.
- 11.9. All payments shall be paid to the Supplier, which shall hold in trust for AHDB any monies due therefrom to any other person until they are received by that person. The Supplier shall comply with instructions from AHDB in Writing to withhold part or all of any such payment to such a person and AHDB shall reimburse the Supplier for any damages awarded judicially against the Supplier consequent upon the Supplier's compliance with any such instructions.

- 11.10. AHDB shall pay all undisputed amounts contained in a valid invoice within 30 days of receipt (the 'Due Date'). When determining whether an invoice is valid, AHDB shall have regard to Schedule B. Time for payment shall not be of the essence of the Contract.
- 11.10.1. AHDB will consider and verify invoices in a timely manner.
- 11.10.2. If any sum due under the Contract is not paid within 30 days of the Due Date then, without prejudice to the Parties' other rights under the Contract, the Supplier shall notify AHDB in Writing of the late payment, and 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.
- 11.10.3. The Supplier is not entitled to suspend deliveries of Goods or Services as a result of any sum being outstanding.
- 11.10.4. In the event that an agreed milestone or deliverable (as applicable) is not achieved or the final claim is not made as agreed, AHDB reserves the right to withhold all or part of the relevant monies otherwise due to the Supplier.
- 11.10.5. AHDB reserves the right to audit any payment for which reimbursement is claimed and the Supplier agrees to co-operate fully in relation to any such audit.
- 11.11. Where this Contract specifies that scheduled payments shall be made by AHDB to the Supplier, without prejudice to its other rights and remedies, no part of the final scheduled payment shall be due from or payable by AHDB until the performance of the Contract by the Supplier has been completed to AHDB's satisfaction acting reasonably.
- 11.11.1. Unless otherwise specified in Schedule B, the final scheduled payment shall be deemed to be 20% of the total payment due under this Contract if performed in full.
- 11.11.2. In the event that the Supplier fails to complete such performance on or before the Completion Date through no fault of AHDB:
- (a) the Parties shall agree a date and the performance shall be completed no later than such date;
 - (b) without prejudice to any other rights and remedies available to AHDB, AHDB shall be entitled to receive from the Supplier an amount equal to 10% of the total sum payable by AHDB to the Supplier under the Contract, such payment being a debt due from the Supplier to AHDB and representing the reasonable estimate by the Parties of the losses or damages likely to arise to or be incurred by AHDB as a result of such breach, and not by way of a penalty or similar charge; and
 - (c) the Supplier shall pay such payment to AHDB within 30 days of receiving a proper invoice from AHDB.
- 11.12. Without prejudice to any other right or remedy, AHDB shall have the right to set off any amount owed by the Supplier to AHDB for any reason including any overpayment by AHDB to the Supplier against any amount payable by AHDB to the Supplier under the Contract or any other contract.
- 11.13. In the event that the Supplier enters into a Sub-contract in connection with this Contract, the Supplier shall ensure that a term is included in the Sub-contract that requires the Supplier to pay all sums due under the Sub-contract to the relevant Sub-contractor, within 30 calendar days, from the date of receipt of a valid invoice as defined by the terms of the Sub-Contract.

12. LIABILITY

- 12.1. Neither Party shall be responsible to the other Party (including any person forming part of the Supplier) for any special, exemplary, indirect or consequential loss or damage, loss of profit, loss of revenue or anticipated savings, loss of business opportunity or loss of goodwill arising under or pursuant to this Contract, whether arising from negligence, breach of contract or otherwise, whether or not that Party has been advised of the possibility of, should have known of, or could reasonably have prevented, such loss or damage.
- 12.2. The Supplier shall indemnify AHDB, its employees, agents and contractors from and against liability for:
- (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 Data Protection Legislation;
 - (d) actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis);
 - (e) any losses, damages, costs or expenses incurred by or awarded against AHDB in respect of any claim or action that the possession, use, development, modification or maintenance of the Supplier's Intellectual Property Rights infringes the Intellectual Property Rights of a third party;
- which arises out of or in connection with the supply of the Goods and Services or a breach of this Contract.
- 12.3. The indemnities contained in Condition 12.2 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 Contract; or
 - (b) the Supplier is able to demonstrate that the loss, damage or injury arose as a direct result of the Supplier acting on specific instructions in Writing from AHDB.
- 12.4. Each Party shall, with effect from the Commencement Date for such period as necessary to enable the Supplier to comply with its obligations under Condition 12, take out and maintain (and shall require any sub-contractor to take out and maintain) with a reputable insurance company an appropriate level of insurance covering appropriate risks.
- 12.4.1. 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.
- 12.4.2. 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 12.4 shall be shown by the insuring Party to the other Party on reasonable request in Writing.
- 12.4.3. No Party to the Contract shall take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to

occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that Party is an insured, a co-insured or additional insured person.

- 12.4.4. AHDB may waive the requirement for indemnity and/or insurance, in whole or part, where the Supplier is able to provide adequate assurance that it can meet any liabilities for which indemnities are provided for under Condition 12.2.
- 12.5. In relation to any Supplier that is an Academic Institution (or is deemed to be such by this Contract), the following shall not apply:
- (a) any requirement for an indemnity and any consequential requirement for insurance and evidence thereof;
 - (b) Condition 11.12.

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

- 12.6. Neither Party shall be responsible for any failure to perform its obligations hereunder due to an event of force majeure, including any circumstances beyond its reasonable control, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either Party's workforce).
- 12.6.1. In the case of an event of force majeure, the Parties shall seek to minimise any adverse effect on the Contract, including adjusting milestones or deliverables (as applicable) where appropriate
- 12.6.2. If an event of force majeure delays the supply of any Goods or Services by more than thirty days and this event could reasonably be envisaged to jeopardise the interests of a Party or the Contract, the Parties shall consider and agree on appropriate action including whether the Contract and its performance should be amended, postponed or terminated and subject to the agreement of AHDB shall take appropriate action.

13. DELIVERY, ACCEPTANCE AND REJECTION

- 13.1. Subject to Conditions 13.1.1 and 13.1.2, the Goods shall be delivered DDP to the AHDB Stores and the Services performed at the place specified in the Contract. Delivery shall take place at the entrance to the relevant building or such other building as may be specified and not roadside unless otherwise agreed in writing prior to delivery.
- 13.1.1. Supplies of Goods by letter post may be addressed to the Principal Office.
- 13.1.2. A different place of delivery or performance may be agreed:
- (a) in Writing prior to delivery of the Goods or the performance of the Services; or
 - (b) orally prior to such delivery or performance and where appropriate subsequently confirmed in Writing.
- 13.1.3. The Supplier shall unload the Goods at its own risk as directed by AHDB. Unless otherwise stipulated by AHDB, deliveries shall only be accepted by AHDB in Business Hours.
- 13.1.4. The date for delivery shall be specified, or if no such date is specified then unless otherwise agreed delivery shall take place within 28 days of the date of the Purchase Order.

- 13.1.5. The Goods shall remain at the risk of the Supplier until delivery in accordance with the Contract to AHDB is complete (including unloading and stacking) when ownership of the Goods shall pass to AHDB.
- 13.2. In respect of Goods, the Supplier shall invoice AHDB upon, but separately from, despatch of the Goods to AHDB. In respect of Services, the Supplier shall invoice AHDB monthly in arrears (or at such other frequency as may be agreed between the Parties).
- 13.3. The Supplier shall ensure that each delivery of Goods is accompanied by a delivery note which shows, among other things, the Purchase Order number, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 13.4. Time shall be of the essence of the Contract in relation to the Supplier's obligation to supply the Goods and Services unless otherwise specifically agreed in Writing.
- 13.5. If the Goods are not delivered on the due date, the Services are not provided in accordance with the agreed timetable or if the Goods or Services (in the reasonable opinion of AHDB) do not comply with the Purchase Order, the Specification or any other standards stipulated by AHDB then, without prejudice to any other rights which it may have, subject to Condition 14.12 AHDB reserves the right to terminate the Contract.
- 13.6. All Goods shall be packaged by the Supplier so as to ensure that they will be in good condition upon arrival at their destination. If the Supplier requires AHDB to return any packaging material to the Supplier that fact must be clearly stated on any delivery note delivered to AHDB and any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 13.7. Where AHDB agrees in Writing to accept delivery of Goods or Services by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to properly deliver any one instalment shall entitle AHDB at its option to treat the whole Contract as repudiated.
- 13.8. If the Goods are delivered to AHDB in excess of the quantities ordered AHDB shall be entitled to reject the excess Goods and shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be available for collection at the Supplier's expense within 3 months. Thereafter AHDB may dispose of such excess Goods at the Supplier's expense.
- 13.9. AHDB shall not be deemed to have accepted the Goods until it has had 7 days to inspect them following delivery. AHDB shall also have the right to reject the Goods as though they had not been accepted for 14 days after any Latent Defect in the Goods has become apparent.
- 13.10. The Supplier agrees that AHDB or AHDB's representative shall be entitled to monitor the performance of the Contract at any reasonable time and, save where AHDB has good reason not to give any notice, on reasonable notice and to inspect and take copies of any relevant records of the Supplier.
- 13.11. The Supplier shall promptly, and in any case within one week of its becoming aware of any circumstances likely to adversely affect the supply of the Goods and Services or the time in which this will be completed, bring these matters to the attention of AHDB's Primary Contact in Writing and the Primary Contacts shall reasonably agree any consequential action that shall be taken.

14. TERMINATION

- 14.1. This Contract may be terminated by agreement in Writing between the Parties at any time.
- 14.2. Where AHDB is reasonably of the opinion that the Supplier has a significant conflict of interest relating to the Contract, subject to Condition 14.12 AHDB may terminate the Contract. This Condition shall not apply if any such conflict of interest is capable of being avoided or removed and the Supplier promptly and successfully takes steps at its expense to avoid or remove the conflict.
- 14.3. Where in the reasonable opinion of AHDB the Supplier has:
- (a) failed to progress the supply of the Goods and Services in accordance with the Specification unless otherwise reasonably agreed between AHDB and the Supplier in Writing, including any agreement under Condition 13.11; or
 - (b) failed to otherwise fulfil its obligations under this Contract.
- AHDB may give the Supplier notice in accordance with Condition 7 specifying the way in which its performance falls short of the requirements of the Contract, or is otherwise unsatisfactory. Such notice may:
- (a) direct the Supplier to remedy the fault at the Supplier's expense within such time as may be reasonably specified by AHDB; and/or
 - (b) withhold or reduce payments to the Supplier, in such amount as AHDB reasonably deems appropriate in the circumstances.
- 14.3.1. In relation to any significant failure described in Condition 14.3:
- (a) If the failure is not reasonably remediable, AHDB may treat the failure as a material breach of the Contract.
 - (b) If the failure is reasonably remediable and the Supplier fails to remedy it reasonably promptly or in accordance with any direction given by notice under that Condition, AHDB may then treat the failure as a material breach of the Contract.
- 14.4. In the event that the:
- 14.4.1. Supplier has committed a material breach of the Contract, subject to Condition 14.12 AHDB may terminate the Contract with immediate effect. This Condition shall not apply if such breach is capable of remedy and the Supplier has remedied such breach at its own expense within 30 days (or such other period as may reasonably be agreed) of being required by AHDB in Writing to do so;
- 14.4.2. AHDB has committed a material breach of the Contract, the Supplier may terminate the Contract with immediate effect. This Condition shall not apply if such breach is capable of remedy and the AHDB has remedied such breach at its own expense within 30 days (or such other period as may reasonably be agreed) of being required by the Supplier in Writing to do so.
- 14.5. If any distress, execution or other process is levied upon any of the assets of the Supplier intended to be used for the purposes of the supply of the Goods and Services, subject to Condition 14.12 AHDB may terminate the Contract. This Condition shall not apply if the Supplier is able to properly undertake such supply by other means at no additional cost to AHDB.
- 14.6. If the Supplier being an individual dies or is judged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983, AHDB may terminate the Contract.

- 14.7. The Supplier shall promptly inform AHDB in Writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or change of status and of the completion of any such matter. For the purposes of this Condition 14.7, 'control' has the meaning set out in section 1124 of the Corporation Tax Act 2010.
- 14.7.1. AHDB shall respect any reasonable request by the Supplier to treat information provided under Condition 14.7 as Confidential Information for an appropriate specified period.
- 14.7.2. Upon completion of any of the matters described in Condition 14.7, AHDB shall consider in the context of the Procurement Act 2023 Schedule 8 Paragraph 9 whether the change is or is not a permitted contract modification Procurement Act 2023 Schedule 8 Paragraph 9. If AHDB considers that the modification is not a permitted change, it may terminate the Contract in accordance with Condition 14.12.
- 14.8. The Supplier shall inform AHDB in Writing immediately upon the occurrence of any of the following events:
- (a) being an individual:
- is the subject of a bankruptcy order, or
 - has made a composition or arrangement with his creditors;
- (b) being a company:
- goes into compulsory winding up;
 - passes a resolution for voluntary winding up;
 - suffers an administrator, administrative receiver or receiver and manager to be appointed or to take possession over the whole or any part of its assets;
 - has entered into a voluntary arrangement with its creditors under Part I of the Insolvency Act 1986;
 - has proposed or entered into any scheme of arrangement or composition with its creditors under Part 26 of the Companies Act 2006; or
 - has been dissolved;
- (c) being a partnership or unregistered company:
- goes into compulsory winding up;
 - is dissolved;
 - suffers an administrator or receiver and manager to be appointed over the whole or any part of its assets;
 - has entered into a composition or voluntary arrangement with its creditors; or
 - any individual member of the partnership falls within Condition 14.8(a);
- (d) or is in any case affected by any similar occurrence to any of the above in any jurisdiction,
- and subject to Condition 14.12 AHDB may terminate the Contract.

14.9. If:

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

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

14.10. AHDB shall have the right at any time and for any reason to terminate the Contract by giving not less than 60 days' notice, whereupon all work on the Contract shall be discontinued.

14.11. Subject to Condition 14.12 AHDB may give the Supplier written notice of its intention to terminate this Contract where it considers that a termination ground listed in section 78(2) of the Procurement Act 2023 applies:

- (a) AHDB considers that the Contract was awarded or modified in material breach of the Procurement Act 2023 or regulations made under it;
- (b) the Supplier has, since the award of the Contract, become an Excluded Supplier or Excludable Supplier (including by reference to an Associated Person);
- (c) a supplier (other than an associated person) to which the Supplier is sub-contracting the performance of all or part of the Contract is an Excluded Supplier or Excludable Supplier.

14.12. A notice to terminate issued by AHDB to the Supplier pursuant to Condition 14.11 shall:

- (a) set out which termination ground AHDB considers applies pursuant to section 78(2) of the Procurement Act 2023 together with AHDB's reasons for deciding to terminate on this basis;
- (b) invite the Supplier to make representations to AHDB about the existence of the termination ground and AHDB's decision to terminate;
- (c) specify the means by which and the time (such time period to be reasonable in the circumstances) by which such representations must be made; and
- (d) insofar as it states AHDB's intention to terminate by reference to the status of a sub-contractor under section 78(2)(b) or (c) of the Procurement Act 2023, specify a time (such time to be reasonable in the circumstances) by which the Supplier may terminate the subcontract and, if necessary, appoint an alternative sub-contractor.

14.13. On expiry of the time for the Supplier to make representations under Condition (d), if, after considering any representations, AHDB is satisfied that the termination ground applies, it may terminate the Agreement with immediate effect by giving final written notice to the Supplier.

14.14. Where the Agreement is terminated pursuant to Condition 14.13:

- (a) on the basis of the termination ground in section 78(2)(a) of the Procurement Act 2023 AHDB shall pay to the Supplier all sums lawfully due to the Supplier in consideration of its proper performance of the Services up until the date of termination. AHDB shall pay such sums upon receipt by it of a correct invoice for the same from the Supplier in accordance with the provisions of Schedule B paragraph 3;

(b) on the basis of the termination ground in section 78(2)(b) or (c) of the Procurement Act 2023 such termination shall be at no loss or cost to AHDB and the Supplier hereby indemnifies AHDB against any such losses or costs which AHDB may suffer as a result of any such termination,

and save as set out in Condition 14.18 and 14.19, AHDB shall have no further liability to the Supplier, including in relation to any loss of profit of the Supplier accruing after the termination.

- 14.15. Before giving notice of termination under Conditions 6.6, 13.5, 14.2, 14.4, 14.5, 14.7.2, 14.8, 14.9, 14.10 or 14.11, AHDB shall consult the Supplier and the Parties shall promptly consider whether any part of the supply of the Goods and Services could reasonably and usefully continue to be undertaken as an alternative to termination and if so whether the Contract should consequently be amended. If AHDB agrees to such continuation, notice of termination shall not be given and appropriate amendments shall be made to the Contract, which may include amendments to the Specification and the payments due.
- 14.15.1. In the event that no agreement is reached to continue the supply of any or all of the Goods and Services within 10 days of AHDB consulting the Supplier under Condition 14.12, AHDB may terminate the Contract.
- 14.16. Notice of termination of this Contract shall be given by AHDB to the Supplier in accordance with Condition 7.
- 14.17. AHDB may, during any notice period direct the Supplier:
- (a) to refrain from performing the Contract or any part thereof;
 - (b) to cease work immediately; or
 - (c) to complete, in accordance with this Contract, any part of the supply of Goods or Services, which shall be paid at the agreed price or, where no agreement exists as to price, a fair and reasonable price, and such of the Contract as is relevant to the completion of such part shall continue to have effect until such part is completed or discontinued.
- 14.18. Termination of this Contract by AHDB may (unless otherwise specified) have immediate effect.
- 14.19. Except as expressly provided in this Contract, termination of the Contract shall not affect:
- (a) any right, obligation or liability of any Party which has accrued at the date of termination;
 - (b) any provision of this Contract which is expressly or impliedly intended to continue to have effect after the Contract has been terminated.
- 14.20. If the Contract is terminated by AHDB otherwise than as a consequence of a material breach by the Supplier, the Supplier shall be entitled to claim from AHDB reimbursement of expenditure incurred or irrevocably committed by the Supplier necessarily and properly in relation to the performance of this Contract including expenditure unavoidably incurred as a result of such termination but excluding loss of profits and any compensation or consequential or indirect loss. The liability of AHDB under this Condition together with any other payments made or to be made to the Supplier shall not exceed the total sum payable for the supply of the Goods and Services as set out in Schedule B.
- 14.20.1. Any such reimbursement shall be conditional upon the Supplier complying with a duty to mitigate such costs as far as is reasonably practicable.

14.21. In the event of termination of this Contract as a consequence of a material breach by the Supplier:

- (a) AHDB shall not be under any obligation to make any payment to the Supplier for such period as is reasonable for AHDB to assess the loss and/or damage suffered as a result of the termination. After such period and discussion with the Supplier, AHDB may recover the amount of such loss and/or damage including by set off against any sums due to the Supplier in relation to this Contract;
- (b) the Supplier shall promptly refund to AHDB any funds paid by AHDB to the Supplier in accordance with this Contract and not in the reasonable opinion of AHDB properly spent or properly committed for the purposes of the Contract;
- (c) all rights granted to AHDB by the Supplier including any licence to use any Intellectual Property Rights in relation to the Goods and Services shall reasonably continue until the supply of the Goods and Services has been discontinued or completed in relation to the Goods and Services or similar goods and services with a replacement supplier;
- (d) all rights acquired during the period of the Contract by the Supplier to use any Intellectual Property Rights provided by AHDB shall cease upon termination;

14.22. In the case of termination of this Contract pursuant to Conditions 5.2.1, 6.6, 13.5, 14.2, 14.4, 14.5, 14.6, 14.7.2, 14.8, 14.9 or 14.10, without prejudice to any other rights which it may have AHDB reserves the right to:

- 14.22.1. refuse to accept any subsequent delivery of the Goods or Services which the Supplier attempts to make;
- 14.22.2. purchase from a third party Goods and Services of similar nature and scope to those that were to be supplied under this Contract;
- 14.22.3. recover from the Supplier any excess cost incurred by AHDB over the price agreed in this Contract together with all charges and expenses arising from the purchase of such Goods or Services from the third party; and
- 14.22.4. claim damages for any additional costs, loss or expenses incurred by AHDB which are in any way attributable to the Supplier's failure to perform the Contract.

14.23. AHDB may terminate the Contract by written notice to the Supplier with immediate effect if the Contract, as a direct result of a Procurement Challenge, is terminated or set aside or the decision to award the Contract is quashed by any court of competent jurisdiction such that it shall cease to exist and/or any Goods or Services under this Contract are prevented from being supplied.

14.23.1. In the event that this Contract or any modification of the same is subject to a Procurement Challenge or the decision to award the Contract is challenged in any court of competent jurisdiction, then:

- (a) the Parties shall co-operate in good faith to determine how they should manage the best way to mitigate the impact of the Procurement Challenge and/or court proceedings, which may include varying some or all of this Contract and/or terminating this Contract in whole or in part;
- (b) if AHDB (acting reasonably) considers that it is likely that a court would make an order for setting aside the Contract and/or declare that the Contract or is otherwise terminated or materially amended, or the decision to award the Contract is likely to be quashed, this Contract shall terminate immediately upon AHDB giving written notice to the Supplier;

- (c) save as set out in Condition 14.17 neither party shall have any further liability to the other, including without limitation, in relation to any loss of future profit by either party accruing after the order for setting aside, claims for restitution and/or compensation howsoever arising; and

14.23.2. The Parties have agreed the inclusion of Condition 14.23.1 in order to regulate their mutual rights and obligations in the event of a Procurement Challenge and/or an order to set aside the Contract being made. The Parties also agree that the operation of Condition 14.23.1 shall provide the Supplier with sufficient restitution and compensation.

14.24. The Supplier shall co-operate fully with AHDB following the termination of the Contract as a consequence of its expiry or otherwise. This co-operation shall extend to allowing full access to, and providing copies of, all documents, reports, summaries and any other information relating to the supply of the Goods and Services. Upon the termination of the Contract, the Supplier shall:

- (a) forthwith return to AHDB the originals and any copies of all documents and materials provided in relation to the Contract and destroy any electronic copies thereof;
- (b) transfer to AHDB, or any person designated by AHDB, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the supply of the Goods and Services;
- (c) permit AHDB to enter premises and recover any documents, equipment and materials which are the property of AHDB provided AHDB reasonably informs the Supplier in advance of its intention so to do,

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

14.24.1. Following termination or expiry of the Contract otherwise than as a result of a material breach by the Supplier or in accordance with Condition 14.11, the Supplier shall be entitled to invoice AHDB for a reasonable fee in respect of the Supplier's time spent on assisting AHDB with any requests for information.

14.25. The Parties acknowledge that on expiry or earlier termination of this Agreement, AHDB may be required to publish a contract termination notice on the Central Digital Platform pursuant to section 80 of the Procurement Act 2023.

15. TRANSFER OF RIGHTS AND OBLIGATIONS

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

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

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

16. FREEDOM OF INFORMATION AND DATA PROTECTION

16.1. The Parties acknowledge that, in order to be compliant with the Freedom of Information Act 2000, the Environmental Information Regulations 2004, or any

other legislation governing access to information (the 'FOI Legislation'), there may be an obligation to provide information that relates to this Contract, which may include Confidential Information, on request to third parties.

- 16.1.1. In the event that either Party receives a request for information relating to the Contract falling within the scope of the FOI Legislation, that Party (the 'Disclosing Party') shall be entitled to disclose such information as is necessary to comply with the FOI Legislation. The Parties shall co-operate in order to enable the Disclosing Party to comply with its obligations under the FOI Legislation. Where Confidential Information relating to the Contract is exempt from disclosure, it shall not be disclosed without the agreement in Writing of the owning Party.
- 16.1.2. The Disclosing Party shall not be liable for any loss, damage, harm or other detriment suffered by the other Party arising from the disclosure of any information required by the FOI Legislation to be disclosed.
- 16.2. AHDB maintains a database of its contracts including all those likely to have a value of £25,000 or more. AHDB recognises the importance of transparency in its procurement and contracting, and subject to any confidentiality obligations the contents of these contracts will be made available to interested persons on request.
 - 16.2.1. Where required by the Procurement Act 2023, AHDB will publish the Contract.
 - 16.2.2. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOI Legislation, the content of this Contract is not Contractor's Confidential Information. The Disclosing Party shall be responsible for determining whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOI Legislation.
 - (a) Notwithstanding any other term of this Contract, the Supplier hereby gives its consent for AHDB to provide or publish to the general public the Contract in whole or part, as it may be amended.
 - (b) The Supplier shall assist and co-operate with AHDB to enable AHDB to provide or publish this Contract, including by identifying any matters which it considers to be confidential or otherwise exempt from disclosure under the FOI Legislation. AHDB will take any representation from the Supplier into fair and proper account.
- 16.3. The Supplier shall not publicise or permit any other person to publicise the procurement, award, existence or content of this Contract without the prior written permission of AHDB's Director of Communications and Legal Services, which may be conditional and which shall not be unreasonably denied, delayed or withheld.
 - 16.3.1. For the avoidance of doubt, Condition 16.3 does not prevent:
 - (a) The disclosure by any Party of this Contract or a draft thereof to a supplier or sub-contractor that is expected to act with the Supplier in relation to the supply of the Goods and Services so that it is aware of the terms under which the Supplier will contract with AHDB. Commercially sensitive matter may be redacted. Similar conditions to those imposed on the Supplier under Condition 16.3 shall be imposed on the recipient.
 - (b) the disclosure of the AHDB Terms to any person.

- 16.4. The Parties shall comply with the obligations contained in Annex 2 in respect of data processing and the protection of personal data within the meaning of the DPL.
- 16.5. Insofar as the Supplier is subject to the FOI Legislation or is the data controller pursuant to the DPL, this Condition 16 and Annex 2 shall have mutual effect mutatis mutandis.

17. DISPUTE RESOLUTION

- 17.1. The Parties shall in good faith attempt to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.
- 17.1.1. If any such dispute is not resolved by such negotiation within 42 days from notification that a dispute exists or such longer period as may be agreed in Writing, including escalation to senior executives if appropriate, the Parties shall consider referring the matter to mediation in accordance with Conditions 17.2 and 17.3.
- 17.1.2. Each Party agrees to pay due consideration to Conditions 17.1 and 17.3 before commencing proceedings to settle a dispute relating to this Contract.
- 17.2. The procedure for mediation shall be as follows:
- 17.2.1. a neutral person ('the Mediator') shall be chosen by agreement between the Parties, alternatively, any Party may within 14 days from the date of the proposal to appoint a mediator, or within 14 days of notice to any Party that the chosen mediator is unable or unwilling to act, apply to the Centre for Dispute Resolution ('CEDR') to appoint a mediator;
- 17.2.2. the Parties shall within 14 days of the appointment of the Mediator meet with him to agree a timetable for the exchange of all relevant and necessary information and the procedure to be adopted for the mediation. If appropriate, the Parties may at any stage seek from CEDR guidance on a suitable procedure;
- 17.2.3. unless otherwise agreed, all negotiations and proceedings in the mediation connected with the dispute shall be conducted in strict confidence and shall be without prejudice to the rights of the Parties in any future proceedings;
- 17.2.4. if the Parties reach agreement on the resolution of the dispute, that agreement shall be put in Writing and shall be binding upon the Parties;
- 17.2.5. failing agreement, any Party may invite the Mediator to provide a non-binding but informative opinion in Writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the dispute without the prior consent of the Parties in Writing.
- 17.3. For a period of 60 days from the date of the appointment of the Mediator, or such other period as the Parties may agree, none of the Parties may commence any proceedings in relation to the matters referred to the Mediator.

18. AUDIT

- 18.1. AHDB (or its authorised representatives) may during Business Hours, access the Supplier's premises and records as may be reasonably required in order to:
- 18.1.1. fulfil any legally enforceable request by any regulator or supervisory authority;
- 18.1.2. check the accuracy of the fees or charges paid or payable pursuant to this Contract;
- 18.1.3. identify suspected fraud; or

- 18.1.4. audit and take copies of relevant records as necessary to verify the Supplier's compliance with the terms and conditions of this Contract.
- 18.2. AHDB shall provide reasonable written notice of its intention to conduct an audit under Condition 18.1, unless such audit is conducted in respect of a suspected breach, criminal activity or fraud, in which event no notice is required.
- 18.3. AHDB shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Supplier or performance of its obligations under this Contract.
- 18.4. AHDB shall ensure that any third party appointed in respect of the audit shall:
- 18.4.1. be bound by written confidentiality obligations no less onerous than those set out in this Contract; and
- 18.4.2. not be a competitor of the Supplier.
- 18.5. The Supplier shall:
- 18.5.1. provide AHDB and its representatives with all reasonable co-operation, access and assistance in relation to each audit; and
- 18.5.2. allow AHDB and its representatives to meet with the Supplier's personnel and ensure that the Supplier's personnel provide all explanations reasonably necessary to perform the audit effectively.
- 18.6. Each party shall bear its own costs and expenses incurred in respect of compliance with their obligations under this Condition 18, unless the audit identifies a material breach by the Supplier, in which case the Supplier shall reimburse AHDB for all its reasonable costs incurred in the course of the audit.
- 18.7. If an audit identifies that:
- 18.7.1. the Supplier has failed to perform its obligations under this Contract, the Supplier shall take the necessary steps to comply at no additional cost to AHDB;
- 18.7.2. AHDB has overpaid any charges or payment to the Supplier pursuant to this Contract, the Supplier shall pay to AHDB the amount overpaid within five (5) business days of the date of receipt of an invoice or notice to do so; and
- 18.7.3. AHDB has underpaid any Charges, the Customer shall pay to the Supplier the amount of the under payment within fourteen (14) calendar days from the date of receipt of an invoice or notice to do so.

19. GENERAL

- 19.1. Subject to any fraudulent misrepresentation, the Contract including any documents referred to herein and any properly made amendment sets out the entire agreement relating to the supply of the Goods and Services and supersedes any prior agreement, contract, understanding, proposal, statement or other communication relating to the Goods and Services whether oral or written.
- 19.1.1. In entering into this Contract, each Party acknowledges that it does not do so on the basis of and does not rely on any representation, warranty or other provision except as expressly provided or included in this Contract.
- 19.1.2. No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement of an Order, specification, delivery note, invoice, proposal or similar document shall form part of the Contract and the

Supplier waives any right which it otherwise might have to rely on such terms and conditions.

- 19.2. Nothing in this Contract shall be taken as limiting or excluding AHDB's or the Supplier's rights or obligations pursuant to law.
- 19.3. In carrying out the supply of the Goods and Services, the Supplier shall be acting as principal and not as agent or employee of AHDB. Accordingly:
- 19.3.1. Nothing in this Contract shall be construed so as to create a partnership or joint venture between the Parties or have the effect of making any employee of any Party a servant of another Party;
- 19.3.2. 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;
- 19.3.3. The Supplier shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent or employee of AHDB, and
- 19.3.4. Nothing in the Contract shall impose any liability of AHDB in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of AHDB to the Supplier that may arise by virtue of either a breach of the Contract or any negligence on the part of AHDB, its staff or agents.
- 19.4. The following requirements shall not apply as between AHDB and a Party who is part of the Crown and the Supplier shall not require any sub-contractor that is part of the Crown to comply with provisions similar to those requirements:
- (a) Conditions 3.1.2, 12.2, 12.4 (excluding the requirement in relation to sub-contractors) and 14 (to the extent that it relates to Condition 3.1.2);
- (b) Any other requirement for an indemnity or insurance.
- 19.5. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be severed and the remaining provisions of the Contract shall continue in full force and effect.
- 19.6. Each right or remedy of AHDB under the Contract is without prejudice to any other right or remedy of AHDB whether under the Contract or not and is in addition to any conditions implied in favour of AHDB by Law.
- 19.7. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.
- 19.7.1. The delay, failure or neglect of any Party to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 19.7.2. No waiver shall be effective unless it is communicated in Writing.
- 19.8. The Supplier agrees to permit any competent authority to perform such checks as it may lawfully require for the purpose of establishing the compliance of AHDB with regulatory or contractual requirements.
- 19.9. This Contract does not give any person who is not a Party to it any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions.

This does not affect any right of a third party which exists other than pursuant to that Act.

- 19.10. The Contract shall be governed by and construed in accordance with the law of England and Wales.
- 19.10.1. Without prejudice to Condition 17, each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).
- 19.11. Neither party shall make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of this Contract, the wider transactions contemplated by it, or the relationship between the Parties, without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction. The Parties shall consult together on the timing, contents, and manner of release of any announcement.
- 19.12. Subject to clause 19.11, the Supplier shall work with AHDB in good faith to positively promote AHDB where it is appropriate to do so, taking into account the nature of this Contract and the relationship between the Parties.

20. ACCESSIBILITY

- 20.1. The Supplier shall ensure that it complies with The Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations 2018, including (without limitation):
- 20.1.1. ensuring accessibility is considered at the earliest stage of the discussions relating to the Goods or Services;
 - 20.1.2. where applicable, as a minimum, meeting the Web Content Accessibility Guidelines (“WCAG”) 2.2 AA standards;
 - 20.1.3. where applicable, ensuring that all content prepared pursuant to this Agreement is perceivable, operable, understandable and robust in accordance with WCAG principles;
 - 20.1.4. where applicable, apply the Government Digital Service guidance when designing and developing content pursuant to this Agreement;
 - 20.1.5. review, and (as far as is reasonable practicable in the context of the Agreement) seek to improve, its approach to accessibility throughout the term of this Agreement.

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Annex 2 – Data Protection Addendum**1. Processing of Data**

- 1.1 AHDB takes a positive attitude towards data sharing providing it is appropriate, undertaken within the scope of the Data Protection Legislation 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 to this Annex 2 (the "Data") for the purpose specified therein ("Purpose"). All Data shall be transmitted securely in accordance with Part 1.
- 1.3 For the purposes of Data Protection Legislation, AHDB is the Data Controller and the Supplier is the Data Processor. Both parties shall comply with all applicable requirements of the Data Protection Legislation.
- 1.4 The Data provided under this Agreement may only be used for the Purpose.

2. Data Access, Supplier Personnel and Sub-contractors

- 2.1 The Supplier shall process the Data solely for the Purpose on a strictly need to know basis, and must not be used for any other purpose. Access to the Data must be limited by the Supplier to those personnel who need to have such access for the Purpose ("Permitted Persons").
- 2.2 For the purpose of this Contract, Permitted Persons shall mean all employees, officers, staff, other workers, agents and consultants of the Supplier who are engaged in the performance of the Purpose.
- 2.3 The Supplier shall on request and subject to any requirements or limitations of the DPL, give AHDB such particulars as it may reasonably require of all persons who are or may be at any time employed in the supply of the Goods and Services.
- 2.4 The Supplier shall take all reasonable steps to ensure the reliability and integrity of any Permitted Persons who have access to the Data and ensure that they:
 - 2.4.1 are aware of and comply with the Supplier's duties under this Contract;
 - 2.4.2 are subject to appropriate confidentiality undertakings with the Supplier;
 - 2.4.3 are informed of the confidential nature of the Data and do not publish, disclose or divulge any of the Data to any third party unless directed in writing to do so by AHDB or as permitted by this Contract; and
 - 2.4.4 have undergone adequate training in the use, care, protection and handling of personal data.
- 2.5 The Data must not be provided in whole or in part to any other natural or legal person.
- 2.6 The Supplier is responsible for ensuring that all Permitted Persons fully comply with all obligations and requirements of this Contract. Failure to do so shall be considered a material breach of this Contract.
- 2.7 The Supplier must ensure that all Permitted Persons and any approved sub-contractor, are subject to a duty of confidence and binding written contractual obligations in respect of the Data no less onerous than those contained in this Contract.
- 2.8 The Supplier shall not appoint any sub-contractor without AHDB's prior written consent. The Supplier shall remain fully liable for the Supplier, and any sub-

contractor's, compliance with the obligations set out in this Contract and for all its acts or omissions. The Supplier shall provide AHDB with such information regarding the sub-contractor as AHDB may reasonably require in order to undertake the required due diligence in respect of the processing chain.

3. Permitted Processing, Storage and Protection of Data

3.1 The Supplier shall:

- 3.1.1 comply with all applicable DPL in respect of the performance of its obligations under this Contract 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 and the Cyber Security Requirements set out in the Appendix to this Annex 2;
 - 3.1.3 process the Data only on and in accordance with AHDB's written and documented instructions as set out in this Contract and as provided in Writing from time to time, unless the processing is prohibited by any applicable laws and the Supplier has informed AHDB of such applicable laws;
 - 3.1.4 notify AHDB immediately at Data.Protection@ahdb.org.uk if it believes that it has been given an instruction which does not comply with the DPL, unless applicable law prohibits notification to AHDB;
 - 3.1.5 not transfer or permit the transfer of the Data outside of the United Kingdom or the European Economic Area without AHDB's prior written consent, and the following conditions have been met: (i) AHDB or the Supplier has provided appropriate safeguards in relation to the transfer; (ii) the data subject has enforceable rights and effective legal remedies; (iii) the Supplier complies with its obligations under the DPL by providing an adequate level of protection to any Personal Data that is transferred; and (iv) the Supplier complies with reasonable instructions notified to it in advance by AHDB with respect to the processing of the Personal Data; and
 - 3.1.6 implement and maintain appropriate technical and organisational measures in accordance with this Annex 2 (including the Cyber Security Requirements set out in the Appendix) 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 having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 3.2 As a minimum level of protection for the Data, and without prejudice to any other provision of this Annex 2, the Supplier shall:
- 3.2.1 assess risks to the confidentiality, integrity and availability of the Data at least quarterly;

- 3.2.2 verify its Information and Communication Technology (ICT) systems handling the Data to the extent necessary to give confidence in the security of the data; and
- 3.2.3 perform secure back-ups of all Data and ensure that up-to-date back-ups are stored in accordance with a recovery plan. The back-ups shall be made available to AHDB on request.

4. Data Subject Rights

- 4.1 The Supplier may inform any enquirer that it is conditionally authorised by AHDB to have and to use the Data and that the Data is being held and used in confidence under its control. Any such enquiries shall be reported promptly to the DPO in writing at Data.Protection@ahdb.org.uk.
- 4.2 Subject to clause 5.1 of this Annex 2, the Supplier 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, in the fulfilment of its obligations to respond to requests made by data subjects to exercise any of their rights under DPL and in ensuring compliance with its obligations under DPL with respect of security, breach notifications, impact assessments and consultations with supervisory authorities or regulators.

5. Data Loss or Breach

- 5.1 For the purposes of this clause, "Data Breach" shall have the meaning given to it in the DPL. The Supplier shall notify AHDB immediately if it becomes aware of any event that results, or may result, in unauthorised access to Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Data, including any Data Breach. The Supplier's obligation to notify under clause 5.2 below shall include the provision of further information to AHDB in phases, as details become available.
- 5.2 The Supplier shall notify AHDB's DPO at Data.Protection@ahdb.org.uk of any suspected or actual Data Breach without undue delay (but in no event later than twelve (12) hours after becoming aware of the actual or potential Data Breach) and provide such details as may be reasonably required regarding the nature and likely consequences of the actual or potential Data Breach.
- 5.3 The Supplier shall notify AHDB's DPO at Data.Protection@ahdb.org.uk without undue delay (but in no event later than twelve (12) hours of becoming aware) if the Supplier becomes aware that the Data in its possession has or may have become corrupted, lost or degraded and inform AHDB of the remedial action the Supplier proposes to take. The Supplier shall restore or procure the restoration at its expense of such Data that has become corrupted, lost or degraded wholly or partially as a result of the Supplier's default without delay. Subject to the Supplier having been given a

reasonable opportunity to undertake such restoration, if such restoration is performed by or on behalf of AHDB otherwise than by the Supplier, the Supplier shall promptly reimburse the reasonable costs thereby incurred by AHDB.

6. Liability

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

7. Deletion or Return of Data

- 7.1 At the Written direction of AHDB, return or destroy all copies of the Data in accordance with Part 1 unless otherwise required by DPL or applicable law to retain a copy of the Data. 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 Notwithstanding the rights of AHDB set out in Condition 18 of Annex 1 (AHDB Terms), the Supplier shall:
- 8.1.1 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); and
- 8.1.2 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 Written request in a timely manner (and in any event within three (3) business days) and provide such other information or allow such inspections as AHDB reasonably requires to audit the Supplier's compliance with its obligations under the DPL and this Contract and demonstrate its own compliance with the DPL.

9. Data Protection Liability

- 9.1 Nothing in this Contract shall limit the Supplier's liability in respect of any loss or damage arising as a result of a breach of: (1) this Annex 2 (including its Appendix); or (2) DPL.

10. Artificial Intelligence

- 10.1 For the purposes of this clause, the following terms shall have the following meanings:

AI or Artificial Intelligence means and includes any form of artificial intelligence, regardless of the specific techniques, methods, or approaches employed, that exhibits or relies upon the capability to perform human-like tasks or simulate human-like cognitive abilities (e.g. thinking, learning, using judgment, etc.), to deliver outputs such as predictions, recommendations, decisions, text, images, videos, software code,

audio or other content, including all current and future advancements, discoveries, and applications within the field of artificial intelligence, whether existing or later developed or emerging within this domain.

AHDB Materials means documents, data, software, literary works, other works of authorship, specifications, designs, analyses, programs, program listings, programming tools, documentation, user materials, reports, drawings, databases, spreadsheets, machine-readable text and files, financial models and work product provided by AHDB pursuant to this Contract.

10.2 Without limiting the other provisions of this Contract, the Supplier and its authorised subcontractors shall not:

10.2.1 include any AHDB Data, Confidential Information or AHDB Materials, or any portion or attributes thereof, in any AI-related designs, solutions, databases, or models, including, without limitation, any data pools, data lakes, data sets or other data storage or data management ("**AI Tools**"); or

10.2.2 use any AHDB Data, Confidential Information or AHDB Materials, or any portion or attributes thereof, to train, or otherwise enhance the capabilities, or in the development or enhancement, of any AI Tools,

without the prior written consent of AHDB.

10.3 Where the Supplier is permitted to use AI Tools in accordance with clause 10.210.1, the Supplier agrees that any AI Tools provided under this Contract shall be developed and deployed in compliance with applicable laws, regulations, and ethical guidelines, including but not limited to DPL. The Supplier shall ensure that AI Tools are transparent, explainable, and auditable, with clear processes for identifying and mitigating potential biases or ethical concerns.

10.4 During the Contract term, ownership of any outputs generated by AI Tools ("**AI Outputs**") including data, models, and algorithms, shall remain with AHDB unless otherwise agreed in writing.

10.5 The Supplier warrants and represents that all AI Tools used in accordance with this clause shall comply with relevant industry standards and regulatory requirements, and the Supplier indemnifies AHDB in respect of any and all losses incurred by AHDB in respect of its use of the AI Tools and/or any AI Outputs.

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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:

1. The preferred route for the secure transfer of data is via Microsoft SharePoint for regular recurring transfers and Microsoft OneDrive for one-off transfers
2. If email has to be used, then the preference is to send a link rather than attach a file. If a link cannot be used any attached files should be encrypted
3. Recorded post should be used where hard copy items containing personal data are required to be transferred.

Onedrive

You can securely share a file or folder via your Onedrive and a sharing link can be sent via OneDrive or Outlook. Select 'specific people' option and you can also set time limits on access and if the other party can just 'view' or 'edit' the file.

Email

Data sent by email must be encrypted. If encryption is not possible, the data file must be password protected using at least 13 character alpha-numeric passwords. Passwords must only be supplied once data receipt is confirmed. The Data Managers use FIPS 140-2 compliant AES256 'zip' compression and encryption software (eg 7-zip). 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.

Data Storage:

Where it is necessary or required to hold hard copy documents, the Supplier shall ensure that hard copies are stored in a secure building and/or in a locked cabinet, and destroyed in accordance with the below.

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

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

Data destruction must include all backup copies of data as well as live.

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

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

Methods of Destruction:

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.

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Part 2

DISPOSAL OF DATA FORM

It is a condition of this Contract that the Supplier shall return this form duly completed within 7 days of the disposal or deletion of the Data (as applicable) in accordance with Annex 2. Data may be returned by electronic mail to Data.Protection@ahdb.org.uk or in such other format as agreed with AHDB in Writing in advance.

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

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

Disposal Form

I confirm that all Data provided under the Contract and all copies thereof have been returned or destroyed in accordance with the Contract.

Signed:

Name (Block Capitals):

Date:

Organisation:

Please return the completed form within 7 days of data destruction to: Data.Protection@ahdb.org.uk

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Appendix - Cyber Security Requirements

1. Definitions

1.1. The following definitions have the following meanings:

Cyber Security Incident: any virus, vulnerability or security incident which may affect: the Goods or Services (as applicable); or the Supplier's network or information systems.

Good Industry Practice: the exercise of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading organisation within the relevant industry or business sector providing goods or services similar to the Goods or Services (as applicable).

Vendor Security Compliance Guidelines: means the AHDB security compliance guidelines provided by AHDB to the Supplier on or around the date of this Contract, as updated from time to time in AHDB's discretion.

2. Vendor Security Compliance Guidelines

2.1. The Supplier has been provided with, and shall adhere to, AHDB's Vendor Security Compliance Guidelines.

2.2. The Supplier acknowledges that it has been given a grading by AHDB (or AHDB's security advisors) which is set out in the Specification, and the relevant sections of the Vendor Security Compliance Guidelines shall apply in respect of that grading.

2.3. If the Supplier's grade falls below the acceptable minimum, the Supplier shall produce a rectification plan setting in accordance with Vendor Security Compliance Guidelines, setting out the steps to be taken by the Supplier (the "**Improvement Plan**"). AHDB shall oversee implementation of the Improvement Plan in conjunction with the Supplier. Any non-compliance with the Improvement Plan, or failure to achieve the relevant grading, must be resolved within the timescales specified in the Vendor Security Compliance Guidelines.

2.4. In the event that the Supplier is unable to comply with the Improvement Plan, and/or achieve the required grading, within the required timescales this shall constitute a material breach of Contract by the Supplier and AHDB shall have the right to, in its sole discretion (and without prejudice to any other rights or remedies it may have):

2.4.1. suspend the Services until such time as the parties have rectified the issues; or

2.4.2. terminate the Contract immediately by providing notice in Writing to the Supplier.

2.5. The Supplier acknowledges and agrees that AHDB may appoint an independent third party to undertake security assessments of the Supplier's security practices.

3. Supplier Security Obligations

3.1. The Supplier warrants and represent (and shall ensure that its sub-contractors warrant and represent) that:

3.1.1. the Data is kept secure and in an encrypted form;

- 3.1.2. it shall implement the best available security practices and systems in accordance with Good Industry Practice to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Data and any information relating to AHDB;
- 3.1.3. it implements, maintains and adheres to robust and appropriate cyber security policies and procedures across its organisation, including (but not limited to) an incident management process;
- 3.1.4. the information provided to AHDB in respect of its cyber security practices and policies is up to date and accurate and that it will update AHDB immediately in the event of any changes to such information;
- 3.1.5. it has not suffered a Cyber Security Incident, or any Cyber Security Incidents that have occurred have been declared to AHDB and sufficient details have been provided;
- 3.1.6. it shall mitigate all Cyber Security Incidents in a timely manner in accordance with Good Industry Practice and cooperate with AHDB in respect of any investigation relating to a Cyber Security Incident.

4. Testing

- 4.1. The Supplier shall undertake pre-go-live testing relevant to the nature and scope of the Goods or Services being provided pursuant to this Contract, including (but not limited to):
 - 4.1.1. authenticated or API layers, including: all user roles; business logic workflows and session management accessible once authenticated; all internal and external APIs (public-facing or integrated) that process, store, or exchange AHDB data; and any back-end services or connected systems accessible after authentication; and
 - 4.1.2. any testing requirements specified:
 - 4.1.2.1. in the Vendor Security Compliance Guidelines;
 - 4.1.2.2. in the Specification; and/or
 - 4.1.2.3. by AHDB in Writing,(together the "**Penetration Test**").
- 4.2. The Supplier shall provide AHDB with:
 - 4.2.1. a complete copy of the Penetration Test report results within 5 Working Days of test completion and, in any event, at least 10 Working Days prior to the Services going live; and
 - 4.2.2. where any Critical or High severity vulnerabilities are identified, the Supplier shall provide AHDB with a remediation plan within 5 Working Days of the report date.

5. Security Monitoring

- 5.1. The Supplier shall continually monitor the Goods, Services and Deliverables (as applicable) in order to efficiently identify issues, incidents or vulnerabilities with the system or its security measures ("**Incident Logs**") and shall provide AHDB with a copy of Incident Logs at least quarterly. The Supplier shall retain copies of Incident Logs for a minimum period of twelve (12) months.
- 5.2. Where, during the term of this Contract or during the period during which the Supplier processes AHDB Data, the Supplier is required to make changes to its security measures in order to protect against emerging security threats or enhance

it security measures, it shall notify AHDB in Writing at least thirty (30) calendar days in advance of implementing such changes. The Supplier shall ensure that any new security measures or features are tested in accordance with Good Industry Practice and using recognised frameworks such as OWASP, NCSC, ISO 27001, or any updated or successor frameworks applicable at the time of testing prior to being deployed and copies of the results of such testing shall be provided to AHDB in Writing.

5.3. The parties acknowledge that security issues may be identified through Penetration Tests, vulnerability scanning, monitoring, or incident reporting. The Supplier agrees that where a Critical or High vulnerabilities (defined as CVSS v3.1 score ≥ 7.0 or reasonably assessed as materially compromising AHDB systems or data) is identified:

5.3.1. the Supplier must immediately report such vulnerability to AHDB's Information Security Team in writing (at infosec@ahdb.org.uk), providing as much information as is available at the time of the report;

5.3.2. the Supplier shall prepare a remediation plan and submit this to AHDB's Information Security Team in writing within 14 days of identifying the vulnerability;

5.3.3. the Supplier must ensure that such vulnerabilities are remediated and retested within 3 months, with Medium/Low vulnerabilities resolved within 6 months, and evidence of the remediation and retesting must be provided to AHDB in writing; and

5.3.4. if the timescales set out in this paragraph 5.3 cannot be met by the Supplier, the Supplier shall prepare a written risk assessment, and AHDB may (without prejudice to any other rights or remedies it may have) suspend or terminate the Contract at its discretion.

5.4. The Supplier acknowledges and agrees that, where issues are identified with the Deliverables, Goods or Services (as applicable), and testing is required in order to identify and rectify issues, the costs of such testing and any remediation or rectification shall be borne by the Supplier.

6. Cyber Security Incidents

6.1. The Supplier shall notify AHDB immediately if it becomes aware of any Cyber Security Incident and respond without delay to all queries and requests for information from AHDB, whether discovered by the Supplier or AHDB or a third party, in particular bearing in mind the extent of any reporting obligations AHDB may have and that AHDB may be required to comply with statutory or other regulatory timescales.

6.2. Any breach of, or failure to comply with, this Appendix (Cyber Security Requirements) by the Supplier shall be considered a material breach of this Contract.

Annex 3 - Supplier's Tender

[insert]

Draft - Subject to Contract

Annex 4 – Performance Regime

Interpretation

1.1. In this Annex 4 (Performance Regime) the following words and expressions shall have the meanings set out below:

Achieved KPI	means in respect of any KPI in any Measurement Period, the standard of performance actually achieved by the Supplier for that KPI;
KPI Rating	means AHDB's rating of the Supplier's performance against the KPIs as more particularly described in paragraph 2.7 of this Annex 4 (Performance Monitoring);
KPI Review	has the meaning given to it in paragraph 8.1 of this Annex 4 (Performance Regime);
KPI Target	means the minimum level of performance for a KPI which is required by AHDB as set out against the relevant KPI in this Annex 4 (Performance Regime).
Measurement Period	means the period for measuring the Supplier's performance as against the KPIs which shall be every [Month/Quarter/year] from the Commencement Date;
Performance Failure	means a failure by the Supplier to provide the Services in accordance with any KPI Target;
Performance Monitoring Report	means the [Monthly/Quarterly/annual] report completed by the Supplier detailing its performance of meeting the KPI Targets, the format of which shall be notified to the Supplier by AHDB from time to time;
Persistent Performance Failure	means the occurrence of any of the following: <ul style="list-style-type: none"> (a) the Supplier commits [two (2)] or more Performance Failures in the same Measurement Period; (b) the Supplier commits the same Performance Failure in [two (2)] consecutive Measurement Periods; (c) failure by the Supplier to submit a Rectification Plan in accordance with the timescales in

paragraph 3.4 of this Annex 4 (Performance Regime);

- (d) failure by the Supplier to implement any Rectification Plan in accordance with its terms; or
- (e) the Supplier being rated Inadequate for any KPI in a Measurement Period.

Rectification Notice has the meaning given to it in paragraph 3.3 of this Annex 4 (Performance Regime); and

Rectification Plan has the meaning given to it in paragraph 3.3 of this Annex 4 (Performance Regime).

2. Key Performance Indicators (KPIs)

- 2.1. The Supplier shall monitor its performance of the Services under this Contract at its own expense as part of the overall provision of the Services in accordance with the provisions of this Annex 4 (Performance Regime) and the other provisions of this Contract.
- 2.2. The KPIs which the parties have agreed shall be used to measure the performance of the **Services** by the Supplier are contained in Appendix 1 (KPIs) of this Annex 4 (Performance Regime).
- 2.3. Where any element of the Services is stated in this Annex 4 (Performance Regime) to be subject to a specific KPI, the Supplier shall provide those Services in such a manner as will ensure that the Achieved KPI in respect of those Services is equal to or higher than the KPI Target for that element.
- 2.4. The Supplier shall, from the Commencement Date, monitor its performance against each KPI Target and shall send AHDB a Performance Monitoring Report detailing the Achieved KPIs within [insert] of the end of each [Month/Quarter/year].
- 2.5. The Supplier shall be responsible for the monitoring and accurate recording at all times of its own performance of the Services and of compliance with, or default under, the requirements of this Contract.
- 2.6. AHDB shall review each Performance Monitoring Report in order to assess and measure the Supplier's performance in respect of the achievement of the KPI Targets and to assign a KPI Rating against each KPI.
- 2.7. AHDB shall assign the following KPI Ratings to the Achieved KPIs:

Rating	Description
Good	The Supplier's performance is meeting or exceeding the KPI Target.
Approaching Target	The Supplier's performance is close to meeting the KPI Target [in that it is [less than [x]%) below the KPI Target.]

Requires Improvement	The Supplier's performance is below the KPI Target [in that it is [between [x]% than [x]%] below the KPI Target.]
Inadequate	The Supplier's performance is significantly below the KPI Target [in that it is [more than [x]%] below the KPI Target.]
[Other	The Supplier's performance cannot be described as good, approaching target, requires improvement or inadequate.]

- 2.8. The contents of the Performance Monitoring Report along with any performance issues shall be discussed at any programmed meetings arranged between the parties in accordance with the Specification.
- 2.9. The parties acknowledge that AHDB is required to publish a contract performance notice on the Central Digital Platform pursuant to section 71(2) of the Procurement Act 2023 and Regulation 39 of the Procurement Regulations 2024 following each assessment of the Supplier's performance against the KPIs. Such contract performance notice shall provide information (including the KPI Ratings) on the Supplier's performance against the three (3) KPIs that AHDB regards as most material to performance of the Contract obligations as at the time the Contract performance notice is published.
- 2.10. The Supplier acknowledges and agrees that on each occasion AHDB is required to publish a contract performance notice on the Central Digital Platform, AHDB shall have absolute discretion in determining which three (3) KPIs it considers are the most material pursuant to paragraph 2.9 above.

3. Performance Failures

- 3.1. Where any breach of or failure to satisfy any KPI Target ("**Performance Failure**") comes to the notice of the Supplier, the Supplier shall report this in reasonable detail to AHDB's authorised representative as soon as reasonably practicable.
- 3.2. The Supplier shall provide reasonable detail to AHDB of any Performance Failure and, in particular, shall ensure that all Performance Failures are recorded in the relevant Performance Monitoring Report.
- 3.3. Where a Performance Failure occurs, AHDB may at its absolute discretion issue a notice to the Supplier (a "**Rectification Notice**") detailing the relevant Performance Failure and setting out a request that the Supplier provides a rectification plan to address the Performance Failure (a "**Rectification Plan**"). A failure by AHDB to issue a Rectification Notice in accordance with this paragraph shall not prejudice any other rights or remedies that AHDB has under this Contract.
- 3.4. The Supplier shall promptly, and in any case within ten (10) Working Days, provide to the AHDB any Rectification Plan requested by AHDB. The parties shall use their best endeavours to agree the terms of any such Rectification Plan as soon as reasonably practicable following receipt by AHDB and, following agreement or determination in accordance with clause **Error! Reference source not found.**, the Supplier shall implement the Rectification Plan in accordance with its terms.

4. AHDB Monitoring

4.1. Notwithstanding AHDB's rights pursuant to paragraph 7 (Persistent Performance Failure) of this Annex 4 (Performance Regime), AHDB may at its absolute discretion, undertake its own assessment and monitoring in seeking to verify the accuracy of the submissions made to it by the Supplier, and the Supplier agrees to facilitate such assessment acting reasonably and in good faith, promptly providing AHDB with access to all records and granting to the Supplier all other assistance which it may reasonably require.

4.2. Without prejudice to AHDB's other express rights under contract, where the Supplier has been found to:

4.2.1. be Fraudulent in the submission of management reports; or

4.2.2. have submitted at least two (2) erroneous monitoring reports within a [six (6)] Month period,

then AHDB may by notice to the Supplier increase the level of its monitoring of the Supplier, and/or (at AHDB's option) increase the level of the Supplier's monitoring of its own performance of its obligations under this this Contract in respect of the Services (or any part thereof) which are the subject of such erroneous or Fraudulent reporting until such time as the Supplier shall have demonstrated to the reasonable satisfaction of AHDB that it will perform (and is capable of performing) its obligations under this Contract.

4.3. For the purposes of paragraph 4.2 above, AHDB acknowledges that if the Supplier has otherwise failed to have demonstrated to the reasonable satisfaction of AHDB as required in paragraph 4.2, but:

4.3.1. the Supplier has removed the person or persons responsible for the Fraudulent reporting under paragraph 4.2 above; or

4.3.2. in the [Month/Quarter/annual] period following AHDB notice (if it has not already been established), there have been no further erroneous reports of any kind,

this shall be regarded as sufficient demonstration that the Supplier will perform and is capable of performing its obligations.

4.4. If AHDB issues a notice under paragraph 4.2, the Supplier shall bear its own costs and indemnify and keep indemnified AHDB at all times from and against all reasonable costs and expenses incurred by or on behalf of AHDB in relation to such increased level of monitoring arising due to the circumstances under paragraph 4.2 above.

5. Persistent Performance Failure

5.1. In the event that the Supplier commits a Persistent Performance Failure, AHDB shall be entitled to terminate this Contract pursuant to clause 14.4

5.2. Without prejudice to paragraph 7.1 above, the parties acknowledge that where the Supplier commits a Persistent Performance Failure falling within limb (d) and/or limb (e), AHDB may be required to publish a contract performance notice on the Central Digital Platform pursuant to section 71(5) of the Procurement Act 2023.

6. Review Period

- 6.1. The KPIs and KPI Targets shall be reviewed by the parties on an annual basis with a view to determining whether the KPIs are reasonable, proportionate and appropriate to the Services having regard to historical performance and prevailing factors relevant at the time (a "**KPI Review**"). The format and location of each KPI Review shall be agreed by the parties in advance, both parties acting reasonably and in good faith.
- 6.2. Any amendment to the KPIs resulting from a KPI Review must be agreed by the parties and, in the event that the parties are unable to agree the amendments to the KPIs or KPI Targets within ten (10) Working Days of a KPI Review, the KPIs prevailing at the date of the KPI Review shall remain in effect.
- 6.3. Notwithstanding the provision of paragraph 8.1 the Supplier can request an interim review of any element of the performance regime set out in this Annex 4 (Performance Regime) where a KPI or Target KPI is not achievable for reasons beyond the control of the Supplier. Such requests shall be made in writing to AHDB's authorised representative who will respond within seven (7) Working Days of the request. AHDB shall be under no obligation to accept an interim review in the circumstances provided for in this paragraph 8.3.
- 6.4. The parties acknowledge that any amendments to the KPIs or KPI Targets must be agreed in writing and signed by both parties.
DB that it will perform (and is capable of performing) its obligations under this Contract.
- 6.5. For the purposes of paragraph 4.2 above, AHDB acknowledges that if the Supplier has otherwise failed to have demonstrated to the reasonable satisfaction of AHDB as required in paragraph 4.2, but:
- 6.5.1. the Supplier has removed the person or persons responsible for the Fraudulent reporting under paragraph 4.2 above; or
- 6.5.2. in the [Month/Quarter/annual] period following AHDB notice (if it has not already been established), there have been no further erroneous reports of any kind,
- this shall be regarded as sufficient demonstration that the Supplier will perform and is capable of performing its obligations.
- 6.6. If AHDB issues a notice under paragraph 4.2, the Supplier shall bear its own costs and indemnify and keep indemnified AHDB at all times from and against all reasonable costs and expenses incurred by or on behalf of AHDB in relation to such increased level of monitoring arising due to the circumstances under paragraph 4.2 above.

7. Persistent Performance Failure

- 7.1. In the event that the Supplier commits a Persistent Performance Failure, AHDB shall be entitled to terminate this Contract pursuant to clause 14.4
- 7.2. Without prejudice to paragraph 7.1 above, the parties acknowledge that where the Supplier commits a Persistent Performance Failure falling within limb (d) and/or

limb (e), AHDB may be required to publish a contract performance notice on the Central Digital Platform pursuant to section 71(5) of the Procurement Act 2023.

8. Review Period

- 8.1. The KPIs and KPI Targets shall be reviewed by the parties on an annual basis with a view to determining whether the KPIs are reasonable, proportionate and appropriate to the Services having regard to historical performance and prevailing factors relevant at the time (a "**KPI Review**"). The format and location of each KPI Review shall be agreed by the parties in advance, both parties acting reasonably and in good faith.
- 8.2. Any amendment to the KPIs resulting from a KPI Review must be agreed by the parties and, in the event that the parties are unable to agree the amendments to the KPIs or KPI Targets within ten (10) Working Days of a KPI Review, the KPIs prevailing at the date of the KPI Review shall remain in effect.
- 8.3. Notwithstanding the provision of paragraph 8.1 the Supplier can request an interim review of any element of the performance regime set out in this Annex 4 (Performance Regime) where a KPI or Target KPI is not achievable for reasons beyond the control of the Supplier. Such requests shall be made in writing to AHDB's authorised representative who will respond within seven (7) Working Days of the request. AHDB shall be under no obligation to accept an interim review in the circumstances provided for in this paragraph 8.3.
- 8.4. The parties acknowledge that any amendments to the KPIs or KPI Targets must be agreed in writing and signed by both parties.