

## Rothamsted General Terms and Conditions for the Supply of Goods and Services

This document constitutes Schedule 2 to each Order form for the Supply of Goods or Services (the “Order”) which Rothamsted Research Limited may issue to a Supplier of Goods and Services and it forms an integral part of the Contract entered into between Rothamsted Research Limited and a Supplier to the exclusion of all terms and conditions which the Supplier might normally seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

### 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

#### 1.1 Definitions:

“**Affiliates**” means in relation to a Party, any subsidiary, subsidiary undertaking or holding company of such Party, and any subsidiary or subsidiary undertaking of any such holding company for the time being. A holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the United Kingdom Companies Act 2006.

“**Arising Intellectual Property**” means all Intellectual Property Rights that arise or are obtained or developed by either Party, or by a contractor on behalf of either Party, after the Commencement Date solely in the course of or in connection with the provision of the Services or Goods (which for the avoidance of doubt includes any Intellectual Property Rights in the Deliverables);

“**Background Intellectual Property**” means all Intellectual Property Rights and Know-how owned by or licensed to a Party as at the Commencement Date (including for the avoidance of doubt any of Rothamsted’s Intellectual Property Rights existing in Rothamsted Materials) and such other Intellectual Property Rights arising after the Commencement Date but not created in the course of or in connection with the Contract and excluding in each case any Arising Intellectual Property and the Improvements;

“**Business Day**” means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

“**Change**” means an amendment to (i) the scope, nature, volume or execution of the Goods or Services under this Contract or (ii) any other term, schedule or annex of this Contract.

“**Change Control Note**” means the written record of a Change agreed or to be agreed by the Parties pursuant to the Change Control Procedure.

“**Change Control Procedure**” means the procedure for changing this Contract, as set out in clause 19.

“**Commencement Date**” has the meaning given in clause 2.1.

“**Conditions**” means these terms and conditions as amended from time to time in accordance with clause 23.9.

“**Confidential Information**” means all confidential information (however recorded or preserved) disclosed by a Party or its representative to the other Party, including but not limited to any information that would be regarded as confidential by a reasonable business person relating to:

- a) the business, finances, affairs, customers, clients, suppliers, plans, intentions or market opportunities of the Disclosing Party or any Affiliate;
- b) the Intellectual Property Rights, technology, operations, processes, product information, know-how, designs, trade secrets or software of the Disclosing Party (or of any Affiliate); and
- c) any information developed by the Parties in the course of carrying out this Contract;

“**Contract**” means the contract between Rothamsted and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

“**Control**” has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

“**Data Protection Legislation**” means any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy and any other Applicable Law regarding data protection;

“**Deliverables**” means all documents, products, materials, results, data or information developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

“**Delivery Location**” has the meaning given in clause 4.2(b).

“**Disclosing Party**” has the meaning given in clause 12.2;

“**EA**” means the UK Equality Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the relevant government department concerning the legislation.

“**Force Majeure Event**” means any circumstance not within a Party’s reasonable control including, without limitation:

- i. acts of God, flood, drought, earthquake or other natural disaster;

- ii. epidemic or pandemic;
- iii. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- iv. nuclear, chemical or biological contamination or sonic boom;
- v. any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- vi. collapse of buildings, fire, explosion or accident; and
- vii. any labour or trade dispute, strikes, industrial action or lockouts (excluding any labour or trade dispute, strike, industrial action or lockout confined to the Supplier's workforce;

**"Goods"** means the goods (or any part of them) set out in the Order.

**"Goods Specification"** means the specification for the Goods, including any related plans and drawings that is agreed in writing by Rothamsted and the Supplier and set out in Appendix A.

**"HRA"** means the UK Human Rights Act 1998 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the relevant government department in relation to such legislation.

**"Improvements"** means any improvements or modifications to a Party's Background Intellectual Property made, invented, developed, created, conceived or reduced to practice by the Supplier in the course of providing the Services or Goods to the Client;

**"Intellectual Property Rights"** means all patents and patent applications, right to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

**"Know-how"** means any unpatented technical and other information which is not in the public domain including any:

- a) trade secrets, information comprising or relating to concepts, data, discoveries, formulae, ideas, Inventions, research models or specifications;
- b) methods, research plans, procedures for experiments and tests and results of experimentation and testing and other technology; and
- c) information about biological or chemical structure or functions of materials;

**"Order"** means Rothamsted's order for the supply of Goods and/or Services, as set out in Rothamsted's purchase order form at the start of this Contract.

**"Personal Data"** has the meaning given in the applicable Data Protection Legislation.

**"process"** and **"processing"** has the meaning given in the Data Protection Legislation.

**"Receiving Party"** has the meaning given in clause 12.2;

**"Rothamsted"** is defined in the Order Form.

**"Rothamsted Materials"** has the meaning set out in clause 5.3(i).

**"Rothamsted Mandatory Policies"** means Rothamsted's mandatory policies which apply to any third parties providing goods or services to Rothamsted as listed in **Error! Reference source not found.** together with (i) any future amendments thereto issued by Rothamsted and (ii) any new policies and procedures acceded to by the Parties.

**"Services"** means the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification in **Error! Reference source not found.**

**"Service Specification"** means the description or specification for Services agreed in writing by Rothamsted and the Supplier and set out in **Error! Reference source not found.**

**"Slavery and Human Trafficking"** has the meaning defined under s.54 of the Modern Slavery Act.

**"Supplier"** means the person or firm from whom Rothamsted purchases the Goods and/or Services.

## 1.2 In this Contract:

- (a) any headings in this Contract shall not affect the interpretation of this Contract;
- (b) unless the context otherwise requires reference to the singular includes the plural and vice versa, any reference to a person includes a body corporate and words importing one gender include both genders;
- (c) a reference to a statute or statutory provision is (unless otherwise stated) a reference to the applicable UK or other country's statute as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it, and reference to a policy, procedure or protocol of Rothamsted is a reference to the version of the policy, procedure or protocol from time to time in force and duly communicated to the Supplier;
- (d) where the words **"include(s)"** or **"including"** are used in this Contract, they are deemed to have the words **"without limitation"** following them, and are illustrative and shall not limit the sense of the words preceding them;
- (e) references to Schedules, clauses or Annexes are references to Schedules, clauses and Annexes of this Contract;
- (f) a reference to a clause shall be deemed to be a reference in a clause in the same Schedule unless otherwise stated;
- (g) in the event of any conflict between the terms set out in the Order and the various schedules or annexes making up this Contract, the terms shall prevail

in the order in which they appear in the Contract unless otherwise agreed by the Parties in writing.

(h) a reference to **writing** or **written** includes email.

## 2. Basis of contract

2.1 The Order constitutes an offer by Rothamsted to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

(a) the Supplier issuing written acceptance of the Order; or

(b) any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence ("**Commencement Date**").

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

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

## 3. Supply of Goods

3.1 The Supplier shall ensure that the Goods shall:

(a) correspond with their description and any applicable Goods Specification;

(b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by Rothamsted, expressly or by implication, and in this respect Rothamsted relies on the Supplier's skill and judgement;

(c) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and

(d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 Rothamsted may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

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

3.5 Rothamsted may conduct further inspections and tests after the Supplier has carried out its remedial actions.

## 4. Delivery of Goods

4.1 The Supplier shall ensure that:

(a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

(b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(c) it states clearly on the delivery note any requirement for Rothamsted to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

(a) on the date specified in the Order;

(b) to the location set out in the Order or as otherwise agreed by the Parties before delivery ("**Delivery Location**"); and

(c) during Rothamsted's normal hours of business on a Business Day, or as instructed by Rothamsted.

4.3 Delivery of the Goods shall be completed on the delivery of the Goods by the Supplier at the Delivery Location.

4.4 If the Supplier:

(a) delivers less than 90% of the quantity of Goods ordered, Rothamsted may reject the Goods; or

(b) delivers more than 105% of the quantity of Goods ordered, Rothamsted may at its sole discretion reject the excess Goods,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and Rothamsted accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.

4.5 The Supplier shall not deliver the Goods in instalments without Rothamsted's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Rothamsted to the remedies set out in clause 6.1.

4.6 Title and risk in the Goods shall pass to Rothamsted on completion of delivery in accordance with clause 4.3.

## 5. Supply of Services

- 5.1 The Supplier shall from the Commencement Date and for the duration of the Contract supply the Services to Rothamsted in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order and time is of the essence in relation to any of those performance dates.
- 5.3 In providing the Services, the Supplier shall:
- (a) co-operate with Rothamsted in all matters relating to the Services, and comply with all instructions of Rothamsted;
  - (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
  - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
  - (d) ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that Rothamsted expressly or impliedly makes known to the Supplier;
  - (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Rothamsted, will be free from defects in workmanship, installation and design;
  - (g) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
  - (h) observe all health and safety rules and regulations and any other security requirements that apply at any of Rothamsted's premises;
  - (i) hold all materials, equipment and tools, drawings, specifications and data supplied by Rothamsted to the Supplier ("**Rothamsted Materials**") in safe custody at its own risk, maintain Rothamsted Materials in good condition until returned to Rothamsted, and not dispose or use Rothamsted Materials other than in accordance with Rothamsted's written instructions or authorisation;
  - (j) not do or omit to do anything which may cause Rothamsted to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Rothamsted may rely or act on the Services; and
  - (k) comply with any additional obligations as set out in the Service Specification.

## 6. Rothamsted remedies

- 6.1 If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, or both, Rothamsted shall, without limiting or affecting

other rights or remedies available to it, have one or more of the following rights and remedies:

- (a) to terminate the Contract by giving seven (7) days' notice in writing to the Supplier. Unless the Supplier has delivered all Goods and performed all Services prior to the end of such notice period to the complete satisfaction of Rothamsted and Rothamsted has confirmed this in writing to the Supplier prior to the end of such notice period, the Contract shall automatically terminate at the end of such notice period;
  - (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
  - (c) to recover from the Supplier any costs incurred by Rothamsted in obtaining substitute goods and/or services from a third party;
  - (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
  - (e) to claim damages for any additional costs, loss or expenses incurred by Rothamsted which are attributable to the Supplier's failure to meet such dates.
- 6.2 If the Goods are not delivered by the applicable date or the Services are not performed by the applicable date, or both, Rothamsted may, at its option, claim or deduct 1% of the price of the Goods for each week's delay in delivery of the Goods and/or claim or deduct 1% of the price of the Services for each week's delay in performance of the Services, in each case by way of liquidated damages, until the earlier of delivery of the Goods or performance of the Services, as applicable, or termination or abandonment of the Contract by Rothamsted, up to a maximum of (i) 10% of the total price of the Goods (in respect of late delivery of the Goods) and (ii) up to a maximum of 10% of the total price of the Services (in respect of late performance of the Services). For the avoidance of doubt, the Parties agree that (i) and (ii) may apply concurrently. If Rothamsted exercises its rights in respect of late delivery under this clause 6.2 it shall not be entitled to any of the remedies set out in clause 6.1 in respect of the late delivery of the Goods. If Rothamsted exercises its rights in respect of late performance under this clause 6.2 it shall not be entitled to any of the remedies set out in clause 6.1 in respect of the late performance of the Services.
- 6.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting or affecting other rights or remedies available to it, Rothamsted shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:
- (a) to terminate the Contract by giving seven (7) days' notice in writing to the Supplier. Unless the Supplier has delivered all Goods and performed all Services prior to the end of such notice period to the complete satisfaction of Rothamsted and Rothamsted has confirmed this in writing to the Supplier prior to the end of such notice period, the Contract shall automatically terminate at the end of such notice period;
  - (b) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;

- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
  - (e) to recover from the Supplier any expenditure incurred by Rothamsted in obtaining substitute goods from a third party; and
  - (f) to claim damages for any additional costs, loss or expenses incurred by Rothamsted arising from the Supplier's failure to supply Goods in accordance with clause 3.1.
- 6.4 If the Supplier has supplied Services that do not comply with the requirements of clause 5.3(d) then, without limiting or affecting other rights or remedies available to it, Rothamsted shall have one or more of the following rights and remedies:
- (a) to terminate the Contract by giving seven (7) days' notice in writing to the Supplier. Unless the Supplier has delivered all Goods and performed all Services prior to the end of such notice period to the complete satisfaction of Rothamsted and Rothamsted has confirmed this in writing to the Supplier prior to the end of such notice period, the Contract shall automatically terminate at the end of such notice period;
  - (b) to return the Deliverables to the Supplier at the Supplier's own risk and expense;
  - (c) to require the Supplier at Rothamsted's discretion to remedy defects in its provision of the Services, provide repeat performance of the Services, or provide a full refund of the price paid for the Services (if paid);
  - (d) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
  - (e) to recover from the Supplier any expenditure incurred by Rothamsted in obtaining substitute services or deliverables from a third party; and
  - (f) to claim damages for any additional costs, loss or expenses incurred by Rothamsted arising from the Supplier's failure to comply with clause 5.3(d).
- 6.5 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 6.6 Rothamsted's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.
- 7. Rothamsted's obligations**
- 7.1 Rothamsted shall:
- (a) provide the Supplier with reasonable access at reasonable times to Rothamsted's premises for the purpose of providing the Services;
  - (b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

## **8. Charges and payment**

- 8.1 The price for the Goods:
- (a) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
  - (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, any royalties, licence fees, supplies and all consumables used by Supplier, travel costs, accommodation expenses and the cost of the Supplier's personnel. No extra charges shall be effective unless otherwise agreed in the Order or through a Change Control Note.
- 8.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by Rothamsted, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services including any royalties, licence fees, supplies and all consumables used by Supplier, travel costs, accommodation expenses and the cost of the Supplier's personnel.
- 8.3 In respect of the Goods, the Supplier shall invoice Rothamsted on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice Rothamsted on completion of the Services. Each invoice shall include such supporting information required by Rothamsted to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 8.4 In consideration of the supply of Goods and/or Services by the Supplier, Rothamsted shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 8.5 **VAT, other taxes or duties.** All amounts payable by Rothamsted under the Contract are inclusive of valued added tax (or national equivalent) applicable to the Goods or Services from time to time ("**VAT**") and any applicable sales tax, export or import duty or any other taxes, currency exchange expenses or banking charges under any Applicable Laws ("**Applicable Tax Amount**") and the Supplier shall be liable to pay such Applicable Tax Amount unless otherwise agreed in the Order or through a Change Control Note.
- 8.6 If a Party fails to make any payment due to the other Party under the Contract by the due date for payment, then the defaulting Party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from the day that the dispute has been resolved until payment.
- 8.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow Rothamsted to inspect such records at all reasonable times on request.

- 8.8 Rothamsted may at any time, without notice to the Supplier, set off any liability of the Supplier to Rothamsted against any liability of Rothamsted to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, Rothamsted may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by Rothamsted of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.
- 9. Intellectual property rights**
- 9.1 **Background Intellectual Property.** The Supplier's Background Intellectual Property is and shall remain the exclusive property of the Supplier and Rothamsted's Background Intellectual Property is and shall remain the exclusive property of Rothamsted.
- 9.2 Any Improvements to a Party's Background Intellectual Property arising in the course of the provision of the Services will vest in the Party who owns or controls the relevant Background Intellectual Property and each Party shall execute all such documents and take all such action as may be necessary to give effect to this clause 9.2.
- 9.3 Rothamsted grants to the Supplier a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to use, copy and modify Rothamsted's Materials and Rothamsted's Background Intellectual Property for the purpose of providing the Services and the Deliverables.
- 9.4 The Supplier hereby grants to Rothamsted, an irrevocable, royalty-free, non-transferable, non-exclusive, worldwide right and licence to use the Supplier's Background Intellectual Property included in the Deliverables only for the Project Period and only for the purposes of receiving the Services from the Supplier. For the avoidance of doubt, the Supplier's Background Intellectual Property embedded in the Deliverables shall not be used separately or beyond the licence rights granted in this clause 9.4.
- 9.5 Rothamsted warrants that the receipt and use of Rothamsted's Materials and Rothamsted's Background Intellectual Property in the performance of this Contract by the Supplier or its Representatives shall not infringe the rights, including any Intellectual Property Rights, of any third party and shall not breach any Applicable Laws.
- 9.6 Rothamsted shall indemnify the Supplier in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Supplier as a result of or in connection with any claim brought against the Supplier or its Representatives for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use, copying or modification in the performance of this Contract of Rothamsted's Materials and/or Rothamsted's Background Intellectual Property.
- 9.7 **Arising Intellectual Property.** The Arising Intellectual Property shall belong to and vest in Rothamsted. The Supplier hereby assigns to Rothamsted ownership of all Arising Intellectual Property. To the extent the Arising Intellectual Property does not vest automatically by operation of law or under this Contract, the Supplier shall execute all such documents and do all things necessary to vest the title and interest in the Arising Intellectual Property in Rothamsted and otherwise shall hold legal title in the Arising Intellectual Property on trust for Rothamsted.
- 9.8 Nothing in this clause shall prevent the Supplier from using any ideas, concepts, processes, parts of the Deliverables which are of generic application, Know-how gained or arising from the performance of the Services for any purpose, or from independently developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the Deliverables, subject to the obligations of confidentiality set out in this Contract.
- 9.9 In the event that Rothamsted decides, by written notice, to file or prosecute any patent application relating to the Arising Intellectual Property Rothamsted shall ensure that the Supplier is named as an inventor on any such application.
- 9.10 Rothamsted grants to the Supplier a non-exclusive, royalty-free, irrevocable, worldwide, research licence with full right to sub-license in respect of Rothamsted's Background Intellectual Property and the Arising Intellectual Property as necessary to allow the Supplier to use such Intellectual Property Rights for the purposes of any future academic or scientific research for internal non-commercial purposes and for non-commercially sponsored research or for teaching.
- 10. Indemnity**
- 10.1 **Indemnity.** The Supplier shall indemnify Rothamsted against all liabilities, costs, expenses, damages and losses suffered or incurred by Rothamsted arising out of or in connection with:
- (a) any claim made against Rothamsted for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding Rothamsted Materials);
  - (b) any claim made against Rothamsted by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and
  - (c) any claim made against Rothamsted by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.
- 10.2 **Liability Cap.** Unless otherwise agreed by the Parties in writing, each Party's maximum liability in aggregate to the other Party arising out of this Contract shall not exceed the higher of:
- (a) for Rothamsted: 100% of the aggregate total of the Price for Goods and Charges for Services due and payable by Rothamsted under this Contract to the Supplier;
  - (b) for the Supplier: the higher of:
    - (i) 300% of the aggregate total of the Price for Goods and Charges for Services paid by Rothamsted under this Contract to the Supplier; and

- (ii) the amount that the Supplier can recover from its insurer for the liability in question.
- 10.3 **Exclusions.** Neither Party shall be liable to the other Party for any loss of an indirect or consequential nature, nor for any loss of turnover, profits, business or goodwill, whether in contract, warranty, negligence, tort, strict liability or otherwise, arising out of any breach of or failure to perform any of the provisions of this Contract.
- 10.4 **Exclusions from Liability Cap.** Notwithstanding the foregoing, nothing in this Contract shall limit the liability of either Party in respect of:
- personal injury or death arising out of that Party's negligence or wilful misconduct; or
  - fraud or fraudulent misrepresentation or wilful misconduct; or
  - for any other liability which cannot be limited or excluded as a matter of law;
  - any breach of applicable data protection legislation;
  - any indemnities set out under clause 10.1.
- 10.5 If the limitations and exclusions in clauses 10.2 and 10.3 are held to be unreasonable by a court of competent jurisdiction, the limit of the relevant Party's liability shall be increased to the amount (if higher) that such Party can recover from its insurer for the liability in question.
- 10.6 **Mitigating steps.** Each Party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Contract.
- 10.7 This clause 10 shall survive termination of the Contract.
- 11. Insurance**
- During the term of the Contract and for a period of 5 (five) years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on Rothamsted's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 12. Confidentiality**
- 12.1 Each Party undertakes that it shall not use or disclose to any person any Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Contract and except as permitted by clause 12.2.
- 12.2 A Party ("**Disclosing Party**") may disclose or make available Confidential Information to the other Party ("**Receiving Party**"). The Receiving Party may disclose the Disclosing Party's Confidential Information:
- to its representatives who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Contract. Each Party shall procure that its representatives to whom it discloses the other Party's Confidential Information:
- have been informed of the confidential nature of the Confidential Information and comply with the Receiving Party's obligations under this clause 12.2; and
  - safeguard the Confidential Information from unauthorised use, access, or disclosure using at least the degree of care the relevant Party uses to protect its similarly sensitive information and in no event less than a reasonable degree of care;
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority, and in these circumstances the Receiving Party shall:
- promptly, and before such disclosure (where reasonably practicable to do so and otherwise immediately afterwards), notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy; and
  - disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.
- 12.3 The prohibition in clause 12.1 shall cease to apply to information which:
- is or becomes generally available to the public (other than as a result of its disclosure by the Receiving Party or its representatives in breach of this Contract);
  - was available to the Receiving Party on a non-confidential basis before disclosure by the Disclosing Party;
  - was, is or becomes available to the Receiving Party on a non-confidential basis from a person who, to the Receiving Party's knowledge, is not bound by a confidentiality obligation with the Disclosing Party or otherwise prohibited from disclosing the information to the Receiving Party;
  - the Parties agree in writing is not confidential or may be disclosed; or
  - is developed by or for the Receiving Party independently of the information disclosed by the Disclosing Party.
- 12.4 Save as permitted by this Contract, no Party shall use any other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.
- 13. Publications and announcements**
- 13.1 Except as required by law or any competent regulatory authority or in compliance with this clause 13, the Parties shall consult on and agree in writing upon the form of all abstracts, reports, presentations, press releases, publications and public announcements concerning this Contract or its subject matter (each a "**Publication**").
- 13.2 Neither Party shall use the names, logos or trademarks of the other in any Publication disclosure, advertising, promotion, commercially-related purposes or presentation without the named Party's prior express written consent.

#### 14. Compliance with relevant laws and policies

- 14.1 In performing its obligations under the Contract, the Supplier shall:
- (a) comply with all Applicable Laws, statutes, regulations and codes from time to time in force; and
  - (b) comply with the Rothamsted Mandatory Policies.

#### 15. Data protection

15.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 15 in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.

15.2 To the extent that the Parties process any Personal Data of another Party in connection with this Contract, each Party shall be acting as a Controller and shall comply with its obligations under all applicable Data Protection Legislation.

15.3 Without prejudice to the generality of clause 15.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

- (a) process that personal data only on the documented written instructions of Rothamsted unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on Applicable Laws as the basis for processing Personal Data, the Supplier shall promptly notify Rothamsted of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying Rothamsted;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by Rothamsted, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, 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);
- (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the European Union unless the prior written consent of Rothamsted has been obtained and the following conditions are fulfilled:
  - (i) the Supplier has provided appropriate safeguards in relation to the transfer;

- (ii) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation 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 Rothamsted with respect to the processing of the Personal Data;
- (e) assist Rothamsted in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (f) notify Rothamsted without undue delay on becoming aware of a Personal Data breach;
  - (g) at the written direction of Rothamsted, delete or return Personal Data and copies thereof to Rothamsted on termination of the Contract unless required by Applicable Law to store the Personal Data; and
  - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 15 and allow for audits by Rothamsted or Rothamsted's designated auditor and immediately inform Rothamsted if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

15.4 Rothamsted does not consent to the Supplier appointing any third party processor of Personal Data under the Contract without Rothamsted's prior written consent. If Rothamsted consents to the Supplier appointing a third party processor of Personal Data under the Contract, the Supplier confirms that it will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 15 and which the Supplier undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation. As between Rothamsted and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 15.

15.5 Either Party may, at any time on not less than 30 days' notice, revise this clause 15 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

#### 16. Termination

16.1 Without affecting any other right or remedy available to it, Rothamsted may terminate the Contract:

- (a) with immediate effect by giving written notice to the Supplier if:
  - (i) there is a change of Control of the Supplier; or



- (ii) the Supplier's financial position deteriorates to such an extent that in Rothamsted's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (iii) the Supplier commits a breach of clause 13 (Compliance with relevant laws and policies).
- (b) for convenience by giving the Supplier twenty (20) Business Days' written notice.
- 16.2 Without affecting any other right or remedy available to it, either Party may terminate the Contract with immediate effect by giving written notice to the other Party if:
- (a) the other Party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of five Business Days after being notified to do so;
- (b) the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- (c) the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 16.3 The Supplier may terminate the Contract pursuant to clause 19.2(e)(ii)(C)c.
- 17. Consequences of termination**
- 17.1 On termination of the Contract, the Supplier shall immediately deliver to Rothamsted as directed by Rothamsted such Deliverables as Rothamsted may direct, and return all Rothamsted Materials as Rothamsted may direct. If the Supplier fails to do so, then Rothamsted may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 17.2 Termination or expiry of the Contract shall not affect the Parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 17.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 18. Force Majeure**
- 18.1 Provided it has complied with the remaining provisions of this clause 18, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this Contract by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of this Contract or otherwise liable for any such failure or delay in the performance of such obligations.
- 18.2 The corresponding obligations of the other Party will be suspended to the same extent as those of the Affected Party.
- 18.3 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event but not later than thirty (30) Business Days from its start, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract. The Parties agree that this clause 18.3(a) shall not apply where both Parties are affected by the same Force Majeure Event; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event.
- 18.4 An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event. The Supplier cannot claim relief if the Force Majeure Event is one which the Supplier should have foreseen.
- 18.5 The Affected Party shall notify the other Party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 18.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than three (3) months, the Party not affected by the Force Majeure Event may terminate this Contract by giving four (4) weeks' notice to the Affected Party.
- 19. Change Control**
- 19.1 General principles**
- (a) Where Rothamsted or the Supplier sees a need to change this Contract, Rothamsted may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in clause 19.2.
- (b) Until such time as a Change is made in accordance with the Change Control Procedure, Rothamsted and the Supplier shall, unless otherwise agreed in writing, continue to perform this Contract in compliance with its terms before such Change.
- (c) Any discussions which may take place between Rothamsted and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either Party.
- (d) Any work undertaken by the Supplier which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this clause 19, shall be undertaken entirely at the expense and liability of the Supplier.

## 19.2 Procedure

- (a) Discussion between Rothamsted and the Supplier concerning a Change shall result in any one of the following:
  - (i) no further action being taken; or
  - (ii) a request to change this Contract by Rothamsted; or
  - (iii) a recommendation to change this Contract by the Supplier.
- (b) Where a written request for a Change is received from Rothamsted, the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Supplier to Rothamsted within 10 Business Days' of the date of the request.
- (c) A recommendation to amend this Contract by the Supplier shall be submitted directly to Rothamsted in the form of two copies of a Change Control Note signed by the Supplier at the time of such recommendation. Rothamsted shall give its response to the Change Control Note within three weeks.
- (d) Each Change Control Note shall contain:
  - (i) the title of the Change;
  - (ii) the originator and date of the request or recommendation for the Change;
  - (iii) the reason for the Change;
  - (iv) full details of the Change, including any specifications;
  - (v) the price, if any, of the Change;
  - (vi) a timetable for implementation, together with any proposals for acceptance of the Change;
  - (vii) a schedule of payments if appropriate;
  - (viii) details of the likely impact, if any, of the Change on other aspects of this Contract including:
    - (ix) the timetable for the provision of the Change;
    - (x) the personnel to be provided;
    - (xi) the Price for the Goods
    - (xii) the Charges for the Services;
    - (xiii) any contractual issues;
    - (xiv) the date of expiry of validity of the Change Control Note; and
    - (xv) provision for signature by Rothamsted and the Supplier.
- (e) For each Change Control Note submitted by the Supplier Rothamsted shall, within the period of the validity of the Change Control Note:
  - (i) allocate a sequential number to the Change Control Note; and

- (ii) evaluate the Change Control Note and, as appropriate:
  - (A) request further information;
  - (B) accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of Rothamsted and return one of the copies to the Supplier; or
  - (C) notify the Supplier of the rejection of the Change Control Note. If the Supplier does not agree with such rejection:
    - a. the disagreement shall be dealt with in accordance with the escalation procedure set out in clause 23.11(a) and
    - b. the Parties will cooperate in good faith to resolve the disagreement in accordance with clause 23.11(a); and
    - c. if the Parties are unable to resolve such dispute through such negotiations within sixty (60) days of such dispute being escalated to the Senior Officers under clause 23.11(a) and notwithstanding any arbitration taking place pursuant to clause 20.11(b), the Supplier shall have the right to terminate the Contract with immediate effect.
- (f) Each Party will bear its own costs in relation to compliance with the Change Control Procedure.

## 20. Equality, Non-Discrimination and Human Rights

- 20.1 Each Party shall not, and shall use reasonable endeavours to ensure that its employees, contractors and agents shall not, discriminate directly or indirectly against any person on the basis of age, disability, gender reassignment, marital or civil partner status, pregnancy or maternity, race, colour, nationality, ethnic or national origin, religion or belief (or lack of religion/belief), sex or sexual orientation.
- 20.2 Each Party shall, and shall use reasonable endeavours to ensure that its employees, contractors and agents shall, at all times comply with and act in a way which is compatible with the EA and the equality duty imposed by that Act.
- 20.3 Each Party shall, and shall use reasonable endeavours to ensure that its employees, contractors and agents shall, at all times comply with and act in a way which is compatible with the HRA.

## 21. Anti-slavery and human trafficking

- 21.1 Each Party shall:
  - (a) ensure that Slavery and Human Trafficking is not taking place in any part of its business or in any part of its supply chain;
  - (b) implement appropriate due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

## 22. Anti-Bribery & Corruption

- 22.1 Each Party shall:

- (a) comply with all Applicable Laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) promptly report to the representatives of the other Parties any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Contract;
- 22.2 Each Party shall ensure that any person associated with it who is performing services in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Parties in this clause 22.
- 23. General**
- 23.1 Assignment and other dealings.**
- (a) Rothamsted may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.
- (b) The Supplier shall not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Rothamsted.
- 23.2 **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of Rothamsted. If Rothamsted consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.
- 23.3 **Notices.**
- (a) Any notice to be given pursuant to this Contract shall be in writing in the English language to the address of the recipient Party set out in the Order or as a Party may otherwise from time to time designate by written notice to the other Party with a copy to the recipient's head of legal and shall be delivered:
- (i) personally, in which case the notice will be deemed to have been received at the time of delivery;
- (ii) by pre-paid, first-class post if the notice is being sent to an address within the country of posting, in which case the notice will be deemed to have been received at 09:00 in the country of receipt on the second (2nd) Business Day in the country specified in the recipient's address for notices after the date of posting; or
- (iii) by international standard post if being sent to an address outside the country of posting, in which case the notice will be deemed to have been received at 09:00 in the country of receipt on the seventh (7th) Business Day in the country specified in the recipient's address for notices after the date of posting.
- (b) To prove service of notice, it is sufficient to prove that the envelope containing the notice was properly addressed and posted or handed to the courier.
- (c) A notice given under the Contract is not valid if sent electronically or by fax.
- 23.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract. If any provision of the Contract is deemed deleted under this clause 23.4 the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 23.5 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 23.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party the agent of the other, or authorise either Party to make or enter into any commitments for or on behalf of the other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 23.7 **Entire agreement.** The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 23.8 **Rights of Third Parties.** A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Contract.
- 23.9 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed through a Change Control Note or otherwise in writing and signed by the Parties or their authorised representatives.
- 23.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales without giving effect to any choice of law or conflict of law provisions or rules that would cause the application of the laws of any other jurisdiction.
- 23.11 **Dispute resolution procedure**
- (a) **Escalation process.** Any question, difference or dispute which may arise concerning the construction, meaning or effect of this Contract, or concerning the rights or liabilities of the Parties hereunder, or any other matter arising out of or in connection with this Contract shall first be submitted to the Chief Executive Officer of Rothamsted and to the Chief Executive Officer of the other

Party (the “**Senior Officers**”) for resolution (each of whom may call on others to advise them as they see fit). The Senior Officers shall discuss the matter arising in good faith and in a timely manner and endeavour to reach a mutually agreeable solution

(b) **Jurisdiction.** If the Parties are unable to resolve such dispute through such negotiations within twenty (20) days of such dispute being escalated to the Senior Officers, then in respect of any dispute, controversy or claim the Parties irrevocably submit to the jurisdiction of the courts of England and Wales.