

Plant Health Centre (PHC) Funding Terms and Conditions

1. Definitions

1.1 In the Contract, unless the context otherwise requires, the following terms have the meanings given to them below:

Agreed Purposes	as set out in Annex 2 of the Contract;
Approved Subcontractors	means those subcontractors so designated in the Offer of Grant and as otherwise approved in accordance with clause 17;
Background Intellectual Property	means all Intellectual Property, other than Foreground Intellectual Property, that is used in connection with the Project;
Commencement Date	has the meaning as set out in the Offer of Grant;
Confidential Information	means information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the research, business, customers, products, affairs and finances of the James Hutton Institute, PHC, or the Grantee including in particular (by way of illustration only and without limitation) information regarding the Grant, information that the Grantee receives or obtains in connection with the Grant or the Project, whether or not such information (if in anything other than oral form) is marked confidential or any other information relating to the Agreed Purposes (which, for the avoidance of doubt could include any results of the Project directly linked to the Agreed Purposes) which ought reasonably to be considered confidential;
Contract	means the Offer of Grant, this Schedule and any annexes signed as relative thereto;
Control	has the meaning given in section 450 of the Corporation Tax Act 2010;
Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures	has the meanings as set out in the Data Protection Laws;
Plant Health Centre (PHC)	the Centre of Expertise for Plant Health, a partnership between the James Hutton Institute, Royal Botanic

Garden Edinburgh, Forest Research and Scotland's Rural College;

Cyber Security Incident

means anything, event, act or omission which gives, or may give, rise to:

- (i) unauthorised access to any information system, data or electronic communications network (including breach of an applicable security policy);
- (ii) reduced integrity of an information system, data or electronic communications network;
- (iii) unauthorised use of any information system or electronic communications network for the processing (including storing) of data;
- (iv) disruption or change of the operation (including takeover of control, malicious disruption and/or denial of service) of an information system or electronic communications network;
- (v) unauthorised changes to firmware, software or hardware;
- (vi) unauthorised destruction, damage, deletion or alteration of data residing in an information system or electronic communications network;
- (vii) removal or limiting the availability of, or possibility to use, data residing in an information system or electronic communications network;
- (viii) the appropriation, publication, dissemination or any other use of data by persons unauthorised to do so; or
- (ix) a breach of the Computer Misuse Act 1990, the Network and Information Systems Regulations 2018, the GDPR or the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Communications Act 2003, the Official Secrets Act 1911 to 1989, or any other applicable legal requirements in connection with cybersecurity and/or privacy in connection with the Project and/or the Contract;

Cyber Security Requirements

means the James Hutton Institute's requirements in connection with cyber security as set out clause 20;

Data Discloser

a party that discloses Shared Personal Data to the other party;

Data Protection Laws

means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of

practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the UK GDPR;

Default

means any breach of the obligations of a party (including material breach) or any negligent act, omission or statement of a party in connection with or in relation to the Contract;

Deliverables

means anything to be delivered by the Grantee to the James Hutton Institute as set out in annex 2;

Duration

has the meaning as set out in the Offer of Grant and any extension as may be agreed between the James Hutton Institute and the Grantee;

EIRs

means the Environmental Information (Scotland) Regulations 2004 or Environmental Information Regulations 2004 and any subordinate regulations made under them from time to time or any superseding or amending enactments or regulations, together with any guidance and/or codes or practice issued by the Scottish Information Commissioner, the Information Commissioner and/or any relevant government department in relation to such legislation;

End Date

has the meaning as set out in the Offer of Grant;

Application form

the form submitted by the Grantee in applying for the Project, a copy of which is attached at Annex 2;

FoI Contact

has the meaning as set out in the Offer of Grant;

FOISA

means the Freedom of Information (Scotland) Act 2002 or Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time or any superseding or amending enactments or regulations, together with any guidance and/or codes or practice issued by the Scottish Information Commissioner, the Information Commissioner and/or any relevant government department in relation to such legislation;

Force Majeure

means any event or occurrence which is outside the reasonable control of the party concerned and which is not attributable to any act or failure to take preventative action by that party, including industrial action, fire, flood, violent storm, pestilence, explosion, malicious damage, armed conflict, acts of terrorism,

nuclear, biological or chemical warfare, or any other disaster, natural or man-made;

Foreground Intellectual Property

means all Intellectual Property Rights, including those in Deliverables and any reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material for use, or intended use, in relation to the Project (excluding Background Intellectual Property), developed or created in the course of or in connection with the Project under the terms of the Contract;

Good Industry Practice

means standards, practices, methods and procedures conforming to legal and regulatory requirements and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as the Grantee under the same or similar circumstances;

Grant

the funding to be provided to the Grantee by the James Hutton Institute for the Project as set out in the Offer of Grant;

Grant Holder

the Project lead;

Grant Reference

the reference number allocated to the Grant as set out in the Offer of Grant;

Grantee

the organisation who has been awarded the Grant;

Grantee Notice Address

has the meaning as set out in the Offer of Grant;

Grantee Representatives

means all persons engaged by the Grantee in the performance of its obligations under the Contract including:

- its employees and workers (including persons employed by a third party but working for and under the control of the Grantee);
- its students, agents, service providers and carriers;
- any subcontractors of the Grantee (whether approved under this Contract or otherwise) and any employees of and workers of any such subcontractors wholly or mainly assigned to carrying out activities in provision of the Project under the Contract.

Grantee Suppliers	means the suppliers in the Grantee Supply Chain;
Grantee Supply Chain	means the Grantee's supply chains relevant to this Contract;
Information Commissioner	means the Commissioner as set out in Part 5 of the Data Protection Act 2018;
Intellectual Property Rights	means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
Joint Code of Practice for Research (JCoPR)	The JCoPR sets out standards for the quality of science and the quality of research processes. This helps ensure the aims and approaches of research are robust. It also gives confidence that processes and procedures used to gather and interpret the results of research are appropriate, rigorous, repeatable, and auditable.
Key Individuals	means the Grantee Representatives identified as being the 'project participants' within the Application Form and which includes the Grant Holder;
Main Contract	the contract entered into between the James Hutton Institute and the Scottish Ministers for the operation of PHC dated 23 February 2023.
Offer of Grant	the offer of grant provided by the James Hutton Institute to the Grantee confirming the award of the Grant for the Project to which this Contract is attached;
Permitted Recipients	the parties to this Contract, the employees of each party and any third parties (including Approved Subcontractors) engaged to perform obligations in connection with this Contract;
Project	the project which has been awarded a Grant as described in the Offer of Grant;
Centre Manager	has the meaning as set out in the Offer of Grant or such other individual as may be notified by the James Hutton Institute to the Grantee;
Records	scientific and financial records in relation to the Project;
Request for Information	means a request for information under FOISA or EIRs within the meaning of section 8 of FOISA and any

other attempted or apparent request under FOISA or EIRs;

Shared Personal Data

the personal data to be shared between the parties under this Contract as set out in Annex 3 of this Contract regarding the categories of data subject also set out in Annex 3;

Subcontract

means a contract between two or more service providers, at any stage of remoteness from the Grantee 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;

Working Day

means a day other than a Saturday, Sunday or bank holiday in Scotland, within the meaning of the Banking and Financial Dealings Act 1971;

Working Hour

means an hour between 0900 hours and 1700 hours on a Working Day.

1.2 The interpretation and construction of the Contract is subject to the following provisions:

- 1.2.1 Words importing the singular meaning include, where the context so admits, the plural and vice versa;
- 1.2.2 Words importing the masculine include the feminine and neuter;
- 1.2.3 Reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.4 References to any statute, enactment, order, regulation or other similar instrument are construed as a reference to the instrument as amended by any subsequent instrument or re-enacted;
- 1.2.5 References to any person include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
- 1.2.6 The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
- 1.2.7 Headings are included in the Contract for ease of reference only and do not affect the interpretation or construction of the Contract.

2. Term

- 2.1 The term of the Contract is from the Commencement Date for the Duration, unless otherwise terminated or extended in accordance with this Contract.

3. Responsibilities of the Grantee

- 3.1 The Grantee must ensure that the Grant Holder is made aware of their responsibilities and use reasonable endeavours to ensure that the Grant Holder observes the Contract.
- 3.2 The Grantee must ensure that the Project complies with all relevant legislation and regulation, including that in effect while work is in progress. This requirement as set out in this clause 3.2 includes approval or licence from any relevant regulatory body that is required before the Project can commence and ensuring it remains in place for the Duration.
- 3.3 The Grantee must notify the James Hutton Institute of any change in its status, or that of the Grant Holder that might affect the eligibility to hold a Grant as will have been notified to the Grantee at the time of advertising the Grant and as set out in the Offer of Grant.
- 3.4 The Grantee acknowledges that the Key Individuals are essential to the proper provision of the Project to the James Hutton Institute. The Key Individuals should not be released from providing the Project without the prior written approval of the James Hutton Institute, except by reason of long-term sickness, maternity, paternity, adoption or parental leave, termination of employment or equivalent extenuating circumstances. Where such extenuating circumstances arise or are foreseeable, the Grantee must give notice of that fact to the James Hutton Institute within a reasonable time.
- 3.5 The Grantee may propose a replacement to a Key Individual (and should do so when a Key Individual is to be released from the Project), in which case:
 - 3.5.1 appropriate arrangements should be made to minimise any adverse impact on the Project which could be caused by the change in Key Individuals (including, wherever possible, a transfer period of sufficient duration to allow for the transfer of know-how and skills); and
 - 3.5.2 the replacement should where possible be of at least equal status and of equivalent qualifications, experience, training and skills to the Key Individual being replaced and must be fully competent to carry out the responsibilities of that person in relation to the Project.
- 3.6 Any proposed replacement to a Key Individual is subject to the approval of the James Hutton Institute. Subject to the Grantee's compliance with this clause, the James Hutton Institute will not unreasonably withhold, condition or delay such approval.
- 3.7 The Grantee should ensure that adequate business continuity plans are in place to ensure that operational interruptions to the Project are minimised and shall assist the James Hutton Institute in implementing any of their reasonable business continuity plans where appropriate.
- 3.8 It is the responsibility of the Grantee to support the James Hutton Institute to communicate the Grant progress and the results of the Project to the Scottish Ministers, as required under the Main Contract.

- 3.9 The Grantee shall undertake the Project with all skill, care, diligence and judgement of the Grantee and in accordance with Good Industry Practice.
- 3.10 The Grantee shall deploy in the performance of the Project only suitably qualified, trained, experienced and (where appropriate) supervised staff or students, together with any Approved Subcontractors as set out in the Offer of Grant or as otherwise approved under the terms of the Contract.
- 3.11 It is the responsibility of the Grantee to manage the resources on the Grant, including the staff. The Grantee must assume full responsibility for staff funded from the Grant and, in consequence, accept all duties owed to and responsibilities for these staff, including, without limitation, their terms and conditions of employment and their training and supervision, arising from the employer/employee relationship.
- 3.12 The Project must be delivered in accordance with Good Industry Practice, the terms of this Contract and in particular the reporting and outputs as set out in Annex 2 must be delivered to the reasonable satisfaction of the James Hutton Institute. Where the James Hutton Institute, acting reasonably, rejects the completion of a milestone or output or Deliverable, the Grantee must at its expense immediately rectify or remedy any defects and/or delays.
- 3.13 All data and reports which are supplied electronically to the James Hutton Institute will be supplied in a format which is compatible with the software used by the James Hutton Institute and the Scottish Ministers, as communicated to the Grantee by the James Hutton Institute prior to signature of the Contract. The Grantee must ensure, to the best of its knowledge and belief, that all electronic files to be submitted to the James Hutton Institute and/or the Scottish Ministers are free of viruses. The Grantee must provide data and reports to the James Hutton Institute in an editable electronic format, on request.
- 3.14 The Grantee shall properly manage and monitor the Project and inform the James Hutton Institute immediately if any aspect of the Contract is not being or cannot be performed and/or cannot be performed in line with agreed timeframes for performance.
- 3.15 The Grantee will not do or omit to do anything in performance of the Project which would cause the James Hutton Institute to be in breach of any relevant legislation, rules, regulations and codes of practice or the Main Contract.
- 3.16 The Grantee will provide all the facilities and equipment that are necessary to complete the Project unless otherwise specified in this Contract.
- 3.17 The Grantee must undertake the Project in accordance with the Contract, to the satisfaction of the James Hutton Institute acting reasonably.

4. Research Principles

- 4.1 The Grantee is responsible for ensuring that ethical issues relating to the Project are identified and brought to the attention of the appropriate approval body or regulatory body. Such approval to undertake the Project must be granted to the Grantee before any work requiring approval begins. Where relevant, the Grantee should interpret ethical issues broadly so as to encompass, among other things, the involvement of human participants in research, the use of

animals, research that may result in damage to the environment and the use of sensitive economic, social or personal data.

- 4.2 Where relevant, the Grantee must use all reasonable endeavours to adopt procedures and techniques that avoid the use of animals. Where this is not possible, the project should be designed so that:
 - 4.2.1 the least sentient species with the appropriate physiology is used;
 - 4.2.2 the number of animals used is the minimum sufficient to provide adequate statistical power to answer the question posed;
 - 4.2.3 the severity of procedures performed on animals is kept to a minimum; and
 - 4.2.4 experiments should be kept as short as possible. Appropriate anaesthesia, analgesia and humane end points should be used to minimise any pain and suffering.
- 4.3 Where relevant, the Grantee is responsible for managing and monitoring the conduct of medical and health research in a manner consistent with the UK Policy Framework for Health and Social Care Research. The Grantee must have in place effective and verifiable systems for managing research quality, progress and the safety and well-being of patients and other research participants in line with Good Industry Practice. These systems must promote and maintain the relevant codes of practice and all relevant statutory review, authorisation and reporting requirements.
- 4.4 Where relevant, health-related research within the social sciences that falls outside the UK Policy Framework for Health and Social Care Research must meet the provisions and guidelines of the Economic and Social Research Council's Research Ethics Framework. While this research may involve patients, National Health Service staff or organisations, it is defined as research that poses no clinical risk or harm to those who are the subjects of research. The Grantee must ensure that appropriate arrangements are in place for independent ethics review of social science research that meets local research ethics committee standards in line with Good Industry Practice. The Grantee will be responsible for submitting an approved Research Ethic Form to the Funder prior to the commencement of any research.
- 4.5 The Grantee must assess significant developments as the Project proceeds, especially those that affect safety and well-being, which should be reported to the appropriate authorities and to the James Hutton Institute. The Grantee must take appropriate and timely action when significant problems are identified. This may include temporarily suspending or terminating the Project.
- 4.6 Where relevant, the Grantee is responsible for managing and monitoring statutory requirements for which it accepts responsibility, for example, in relation to legislation on clinical trials, use of human organs, tissues and data.
- 4.7 The Grantee is responsible for ensuring that the Project complies with any legal, regulatory or professional guidance applicable to the same, including, but not limited to, guidance from the Medical Research Council on the conduct of

medical research, and by the Economic and Social Research Council on the conduct of social science research, provided on behalf of all Research Councils.

- 4.8 The Grantee must have in place adequate systems for ensuring the quality of research that is carried out by its staff so that scientific misconduct (for example; plagiarism, falsification of data, improper selection of data) can be prevented. The Grantee should have effective mechanisms in place for identifying scientific misconduct and clearly publicised and agreed procedures for investigating allegations of such misconduct. The Grantee must comply with the guidelines of the Joint Code of Practice for the Quality Assurance of Research ([JCoPR](#)).

5. Use of Funds and Payment of Grant

- 5.1 The Grant is provided for the Project. Under no circumstances may the Grantee use the Grant to meet costs on any other grant or activity.
- 5.2 The Grantee cannot use the Grant to meet the costs of an activity that will fall beyond the End Date.
- 5.3 No part of the Grant shall be used to fund any activity or material which is party political in intention, use, or presentation or appears to be designed to affect support for a political party.
- 5.4 Virements between budget categories shall not be permitted without the prior written consent of the James Hutton Institute, such consent not to be unreasonably withheld.
- 5.5 The Grant shall be paid by the James Hutton Institute to the Grantee in instalments as detailed in Annex 1 within thirty (30) days from receipt of an undisputed, valid invoice and subject to receipt of sufficient funds from the Scottish Ministers under the Main Contract. All sums are exclusive of VAT. The James Hutton Institute cannot guarantee payment of any invoices which have been submitted later than the deadlines as detailed in Annex 1 and accordingly time is of the essence when ensuring invoices are submitted within agreed deadlines in Annex 1.
- 5.6 Invoices should be submitted to regan.tammi@hutton.ac.uk and accounts@hutton.ac.uk quoting the Grant Reference and the relevant PO number.
- 5.7 The Grantee will be obliged to repay any part of, or the whole of, the Grant to the James Hutton Institute in the event of a result of a decision by the Scottish Ministers to reclaim the PHC funding (in whole or in part), but only to the extent that the repayment of the Grant relates to the work undertaken or planned by the Grantee or any of its subcontractors (including, but not limited to, Approved Subcontractors). Such sum as James Hutton Institute may specify will be repaid within fourteen (14) days following receipt of written notice requesting payment.
- 5.8 Where the Scottish Ministers have made payment to the James Hutton Institute in respect of specific services undertaken for the Project and the Grantee's invoice relates to those specific services then, to that extent, the James Hutton Institute shall treat the invoice as valid and, providing that the James Hutton

Institute (acting reasonably at all times) are not exercising a right of retention or set-off in respect of a breach of the Contract by the Grantee, or in respect of a sum otherwise due by the Grantee in relation to the Contract, payment will be made by the James Hutton Institute to the Grantee without deduction.

- 5.9 Where payments are linked to completion of a milestone or output or Deliverable, such payment shall not be made by the James Hutton Institute until such milestone or output or Deliverable has been accepted by the James Hutton Institute in accordance with clause 3.17.
- 5.10 This Contract forms part of a bigger contract for the benefit of the Scottish Ministers. Should the Grantee have any difficulty in securing the timely payment of an invoice under the Contract, that matter may be referred by the Grantee to the Scottish Ministers.
- 5.11 The James Hutton Institute may send the Grantee a statement to be returned in accordance with Clause 5.12 showing payments the James Hutton Institute made to the Grantee during a financial year.
- 5.12 Where a statement referred to under Clause 5.11 is required, the Grantee must return the statement certifying that expenditure was incurred in accordance with the Grant conditions.
- 5.13 The Grantee must complete and return to the James Hutton Institute an expenditure statement **within one month** of the end date of the Contract. Once an expenditure statement is received and the expenditure incurred is reconciled against payments made, the expenditure statement is considered final.
- 5.14 The James Hutton Institute reserves the right to require the Grantee (and the Grantee shall comply with such request) to complete and submit a statement of expenditure at any time during the course of the Contract, or to provide supplementary information in support of an interim or final expenditure statement.
- 5.15 The Grantee must maintain records of all invoices submitted by any subcontractors and make these available on request to the James Hutton Institute, the Scottish Ministers or their representatives, for audit purposes.
- 5.16 The Grantee shall securely email invoices to the James Hutton Institute in compliance with any reasonable requirements of the James Hutton Institute.

6. Changes in the Project

- 6.1 The Grantee must consult the James Hutton Institute in the event of any material change in the Project (including, but not limited to, material changes that make it unlikely to achieve the objectives of the Project including any Deliverables).

7. Procurement of Equipment

- 7.1 The procurement of equipment, consumables and services, including maintenance, must comply with all relevant legislation and the Grantee's own financial policy and procedures.

8. Ownership and Use of Equipment

- 8.1 It is acknowledged and accepted that equipment purchased by the Grantee from the Grant for use on the Project shall belong to the Grantee.
- 8.2 The Grantee must, as soon as reasonably practicable, inform the James Hutton Institute if, during the term of the Contract, any equipment purchased with Grant funds under Clause 8.1 is not being, and shall not be, used for the Project. The James Hutton Institute reserves the right to determine the disposal of such equipment and to claim the proceeds of any sale.
- 8.3 Any proposal to transfer ownership of the equipment during the term of the Contract is subject to prior James Hutton Institute approval, which approval shall not be unreasonably withheld, conditioned or delayed. After the Project has ended, the Grantee is free to use the equipment without reference to the James Hutton Institute, but the Grantee is nevertheless expected to maintain the equipment for research purposes as long as is reasonably practicable.

9. Inspection

- 9.1 The Grantee must retain and maintain until 5 years after the end of the Project, full and accurate records of the Project and payments made and reimbursed under it.
- 9.2 The James Hutton Institute reserves the right, without any charge to the James Hutton Institute, to have reasonable access during the Grantee's usual business hours to inspect the Records and financial procedures associated with the Grant or to appoint any other body or individual for the purpose of such inspection and to share any such findings with the Scottish Ministers.
- 9.3 The Grantee must, if the James Hutton Institute requires, provide a statement of account for the Grant, independently examined by an auditor who is a member of a recognised professional body, certifying that the expenditure was incurred in accordance with the Contract.
- 9.4 The Grantee shall, for the duration of the Project, provide the James Hutton Institute with all assistance requested by the James Hutton Institute acting reasonably to assist it in complying with its obligations to the Scottish Ministers in relation to record keeping for the Project. This assistance will be at no cost to the James Hutton Institute.
- 9.5 Where required by the Scottish Ministers under the Main Contract, at the end of the Project, the Grantee shall transfer the Records to the James Hutton Institute, such transfer to include full ownership of the Records including all Intellectual Property Rights in relation thereto. The transfer shall be at no cost to the James Hutton Institute. The Grantee shall ensure that all relevant information reasonably required to locate individual items within the records, including metadata and database schema, are also offered to the James Hutton Institute on the same terms. Notwithstanding the foregoing, it is acknowledged that the Grantee may keep a copy of the Records for its own internal record and audit purposes and, subject to approval from the Scottish Ministers, also hereby grants the Grantee a licence to use said Records for its own academic, research and teaching purposes.

- 9.6 If the Grantee shall become bankrupt (whether voluntarily or compulsorily), unable to pay its debts, insolvent or make other arrangements with its creditors or if any resolution is adopted for the winding up of any party, or if a receiver, administrator or administrative receiver is appointed over the whole or any part of its assets or if either party goes into liquidation (whether voluntarily or compulsorily), otherwise than for the purposes of amalgamation or reconstruction or any form of execution levied upon its assets, then the Grantee (or their administrator/trustee) shall transfer the Records to the James Hutton Institute, such transfer to be on the same terms as would apply to a transfer made in terms of clause 9.5.

10. Reporting on the results of the Project

- 10.1 It is the responsibility of the Grantee to meet the outputs of the Project and submit Project reports to the James Hutton Institute in accordance with Annex 2 of the Contract.

11. Project Monitoring and Evaluation

- 11.1 While it is the responsibility of the Grantee to manage the Project, the James Hutton Institute reserves the right to call for periodic information on progress or, on providing reasonable notice to the Grantee, to visit the Project team. The Grant Holder may also be asked to attend meetings to exchange information and ideas with others undertaking research in the same or similar fields.
- 11.2 The Grant Holder must make all reasonable endeavours, if so invited, to respond to requests for information or to attend events or activities the James Hutton Institute organises concerning the research undertaken. The James Hutton Institute may hold such events after the Grant has finished.

12. Intellectual Property

- 12.1 All Foreground Intellectual Property shall be owned by the Grantee or an Approved Subcontractor as may be agreed in an appropriate agreement. The Grantee hereby on creation grants, and shall procure that any Approved Subcontractor or other third party owner grants, to the James Hutton Institute a perpetual (notwithstanding any expiry or termination of this Contract), royalty-free, irrevocable and non-exclusive licence to use, make publicly available, adapt, develop, modify, reproduce, and maintain the Foreground Intellectual Property for non-commercial purposes. Further, the Grantee hereby grants to the James Hutton Institute, with the sole purpose of the James Hutton Institute granting to the Scottish Ministers, a perpetual (notwithstanding any expiry or termination of this Contract), royalty-free, irrevocable and non-exclusive license (with a right to sub-license) to use, make publicly available, adapt, develop, modify, reproduce, and maintain all Foreground Intellectual Property.
- 12.2 Nothing in this Contract assigns ownership of any Background Intellectual Property used under or in relation to the Project. Notwithstanding the foregoing, the Grantee hereby grants to the James Hutton Institute and the Scottish Ministers a royalty-free, perpetual (notwithstanding any expiry or termination of this Contract), irrevocable and non-exclusive licence (with a right to sub-licence) or, if itself a licensee of those rights, grants to the James Hutton Institute and/or the Scottish Ministers an authorised and equivalently wide sub-licence of those

rights, to use, make publicly available, adapt, develop, modify, reproduce, and maintain any Background Intellectual Property which the James Hutton Institute and/or the Scottish Ministers reasonably requires in order to enjoy the benefit of its licence to the Foreground Intellectual Property.

- 12.3 The Grantee shall, promptly, on the request of the James Hutton Institute, execute in favour of the James Hutton Institute a licence or licences of the Intellectual Property Rights outlined in clauses 12.1 and 12.2 (or such part thereof as the James Hutton Institute specifies) reflecting the rights of the James Hutton Institute and/or the Scottish Ministers hereunder. If any of the Foreground Intellectual Property and/or Background Intellectual Property which the James Hutton Institute may reasonably require in order to enjoy the benefit of its licence to the Foreground Intellectual Property are vested in any third party (including an Approved Subcontractor), the Grantee shall use reasonable endeavours to procure that such third party executes the relevant licence.
- 12.4 The Grantee must not infringe the Intellectual Property Rights of any third party in undertaking the Project or otherwise performing its obligations under this Contract and must ensure that the Foreground Intellectual property and the use or possession of the Deliverables does not infringe such Intellectual Property Rights.
- 12.5 The Grantee must promptly notify the James Hutton Institute if any claim or demand is made, or action brought against the Grantee for infringement or alleged infringement of any Intellectual Property Right which may affect the use or possession of the Deliverables or which may affect the provision of the Project.
- 12.6 Where a claim to which clause 12.5 applies is made, the Grantee must, keep the James Hutton Institute fully informed and at its expense, use all reasonable endeavours to:
 - 12.6.1 modify the Project or Deliverables or substitute alternative Deliverables (in any case without reducing performance or functionality and with agreement of the James Hutton Institute, acting reasonably) so as to avoid the infringement or alleged infringement of the Intellectual Property Rights; or
 - 12.6.2 procure the grant of a licence or licences from the pursuer, claimant or complainer, on terms acceptable to the James Hutton Institute, so as to avoid the infringement or alleged infringement of the Intellectual Property Rights of the pursuer, claimant or complainer.
- 12.7 The Grantee must not without the consent of the James Hutton Institute (which consent shall not be unreasonably withheld, conditioned or delayed) make any admissions which may be prejudicial to the defence or settlement of any claim to which this clause applies.
- 12.8 In the event that the James Hutton Institute would like to extend the licence for commercial use, this shall be agreed between the James Hutton Institute and the Grantee (or such Project Partner or third party as applicable) on fair and reasonable terms (such agreement not to be unreasonably withheld).

- 12.9 The James Hutton Institute hereby grants to the Grantee a limited, non-exclusive, non-transferable, non-sub-licensable licence to use the PHC logo as may be required for the purpose of performing the Project, provided that the Grantee submits all materials bearing the PHC logo to the James Hutton Institute for prior review and obtains the James Hutton Institute's prior written approval to such use of the PHC logo, which may be withheld at the James Hutton Institute's sole reasonable discretion.. The Grantee shall not be deemed to have any right or licence to use the PHC logo other than as expressly set out in this clause 12.9. Upon termination or expiry of this Contract for any reason, the Grantee shall immediately cease using the PHC logo.
- 12.10 The Grantee must ensure that all those associated with the Project are aware of the arrangements contained in clause 12.9.
- 12.11 Where applicable, the Grantee shall diligently and actively manage all Foreground Intellectual Property Rights including on a monthly basis identifying and recording what Intellectual Property Rights (including the category thereof) have arisen in respect of the Project, considering what protection or registration is appropriate in respect thereof and whether and if so how such Foreground Intellectual Property Rights should be exploited and shall include the details (including meta-data) in a quarterly report to the James Hutton Institute in a format to be agreed with the James Hutton Institute or otherwise as reasonably specified by the James Hutton Institute.

13. Confidentiality

- 13.1 Each party shall:
- 13.1.1 keep confidential all Confidential Information and safeguard such Confidential Information accordingly, implementing appropriate technical and organisational measures to protect the Confidential Information against disclosure as appropriate;
 - 13.1.2 only use the Confidential Information for the purposes of performing its obligations under the Contract;
 - 13.1.3 not disclose to third parties without the express prior written permission of the other party the Confidential Information;
 - 13.1.4 ensure that no publication of the Confidential Information occurs without the express prior written consent of the other party; and
 - 13.1.5 disclose the Confidential Information only to those persons necessary for the purposes of the Project or the Grant and only to the extent necessary for the proper performance of their duties.
- 13.2 Notwithstanding the obligations in Clause 13.1, the James Hutton Institute shall not be in breach of this Clause 13 by disclosing such Confidential Information to the Scottish Ministers under the Main Contract. The parties acknowledge that under the Main Contract, nothing shall prevent the Scottish Ministers from disclosing any Confidential Information or any other information concerning the Contract:

- 13.2.1 pursuant to a Request for Information concerning the information (see Clause 14 (Freedom of Information));
 - 13.2.2 in accordance with the Scottish Minister's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;
 - 13.2.3 in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;
 - 13.2.4 in accordance with any future policies of the Scottish Ministers concerning the routine disclosure of government information in the interests of transparency;
 - 13.2.5 to any consultant, service provider or other person engaged by the Scottish Ministers, for example to conduct a gateway review;
 - 13.2.6 in response to a Parliamentary Question from a Member of the Scottish Parliament, a member of the United Kingdom Parliament, or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, and when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Scottish Ministers shall if the Scottish Ministers sees fit disclose such information but is unable to impose any restrictions upon the information that the Scottish Ministers provides to Members of the Scottish Parliament or Members of the United Kingdom Parliament; or
 - 13.2.7 for the purpose of any examination by any auditors of the Purchaser (including Audit Scotland, the Auditor General for Scotland and the Scottish Parliament) of the economy, efficiency and effectiveness with which the Purchaser has used its resources.
- 13.3 Each party shall procure that the obligations in Clause 13.1 are observed by its employees, officers and agents and any other party who engages in the Project.
- 13.4 Each party shall notify the other party immediately if it becomes aware of any disclosure in breach of the obligations in this Clause 13. At the request of the party owning the Confidential Information, the other party will take all such steps as are necessary to prevent further disclosure and shall cooperate fully with the owning party in any investigation it considers necessary to undertake as a result of any such breach of security.
- 13.5 Clause 13.1 shall not apply to the extent that:
- 13.5.1 such disclosure is a legal requirement placed upon the other party, or which the other party reasonably considers it ought to disclose such information under FOISA or EIRs, provided that the other party shall comply with the requirements in clause 14 below;
 - 13.5.2 such information was already in the possession of the other party without obligation of confidentiality prior to its disclosure;
 - 13.5.3 such information was obtained from a third party without obligation of confidentiality;

- 13.5.4 such information was already in the public domain at the time of disclosure;
- 13.5.5 information is independently developed without access to the Confidential Information.
- 13.6 Breach of this clause 13 or the Official Secrets Act 1911 to 1989 by the Grantee is a material breach for the purpose of clause 31.3.3.

14. Freedom of Information

- 14.1 The Grantee acknowledges that the James Hutton Institute and the Scottish Ministers are subject to the requirements of FOISA and the EIRs. Where a request is received by the Scottish Ministers who need to collect information from the Grantee via the James Hutton Institute, the Grantee shall:
 - 14.1.1 provide all necessary assistance and cooperation as the James Hutton Institute and/or the Scottish Ministers may reasonably request to enable the James Hutton Institute and/or the Scottish Ministers to comply with its obligations under FOISA and EIRs as requested by the James Hutton Institute to the FoI Contact;
 - 14.1.2 transfer to the James Hutton Institute and/or the Scottish Ministers all requests for information relating solely to the Contract that the Grantee receives as soon as practicable and in any event within 1.5 Working Days of receipt (unless the parties agree acting reasonably that the Request for Information should be responded to by the Grantee if they are also subject to the requirements of FOISA and the EIRs, in which case the Grantee shall be responsible for responding to the Request for Information in compliance with its obligations under FOISA and the EIRs). Where the parties agree that the Request for Information should be responded to by the Grantee, the Grantee shall notify the James Hutton Institute of such Request for Information and take into consideration the James Hutton Institute's comments in relation to whether any exemptions under FOISA or EIRs apply;
 - 14.1.3 provide the James Hutton Institute and/or the Scottish Ministers with a copy of all information held on behalf of the James Hutton Institute and/or the Scottish Ministers which is requested in a Request for Information and which is in the Grantee's possession or control. The information must be provided within 5 Working Days (or such other period as the James Hutton Institute and/or the Scottish Ministers may reasonably specify) in the form that the James Hutton Institute and/or the Scottish Ministers requires;
 - 14.1.4 not respond directly to a Request for Information addressed to the James Hutton Institute and/or the Scottish Ministers unless authorised in writing to do so by the James Hutton Institute and/or the Scottish Ministers.
 - 14.1.5 For the avoidance of doubt where the Grantee acting reasonably is unable to comply with any part of this Clause 14.1 the Grantee shall have no liability to the James Hutton Institute.

- 14.2 If the Request for Information appears to be directed to information held by the James Hutton Institute and/or the Scottish Ministers, the Grantee must promptly inform the applicant in writing that the Request for Information can be directed to the James Hutton Institute and/or the Scottish Ministers.
- 14.3 James Hutton Institute acknowledges that the Grantee is subject to the requirements of FOISA and the EIRs. The James Hutton Institute will provide all necessary assistance and cooperation as the Grantee may reasonably request to enable the Grantee to comply with its obligations under FOISA and EIRs.
- 14.4 The parties acknowledge that the other party may be obliged under FOISA or the EIRs to disclose information requested concerning the other party or the Contract:
- 14.4.1 in certain circumstances without consulting the other party; or
- 14.4.2 following consultation with the other party and having taken its views into account.
- 14.5 Where 14.3.1 applies, the disclosing party must take reasonable steps, if practicable, to give the other party advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the other party after such disclosure to the extent that it is permissible and reasonably practical for it to do.
- 14.6 Subject to this clause 14, the parties agree that any information they hold that is reasonably relevant to or that arises from the provision of the Project shall be provided to the other party on request, unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of FOISA. The parties may disclose such information under FOISA and the EIRs and may (except for where any exemptions apply as set out in FOISA and the EIRs) publish such information. Each party shall provide to the other party within 5 Working Days (or such other period as the may reasonably be specified) any such information requested by the other party.

15. Publication

- 15.1 Any publication by the Grant Holder of the Project should be in accordance with normal academic practice, subject to this Contract.
- 15.2 The Grantee will comply with any open research policy which has been developed by the Scottish Ministers and which has been communicated to it by the James Hutton Institute.
- 15.3 No publication in respect of the Project should be published by the Grantee or Grantee Representatives prior to the James Hutton Institute publishing a report provided to it by the Grantee in relation to the Project on the PHC website. The James Hutton Institute will consult with the Grantee in relation to the publication of the Project report, including whether any part of it should remain confidential. The Grantee acknowledges that the final decision as to whether any part of the Project report will be published shall be at the James Hutton Institute's sole discretion, acting reasonably at all times and in discussion with the Scottish Ministers where appropriate.

- 15.4 Subject to clause 15.3 above, any communication, publication or other public statement in respect of the Project must be submitted to the James Hutton Institute info@planthealthcentre.scot in draft at least 30 days in advance of submission to the publisher, or date of release of the communication or public statement. The James Hutton Institute shall have 28 days in which to review the material. If the James Hutton Institute believes that the communication, publication or other public statement contains Confidential Information, the James Hutton Institute will notify the Grantee, who shall not publish such Confidential Information. The James Hutton Institute may request the Grantee to delay the communication, publication or other public statement for a further three (3) months or such other period to be agreed between the parties to protect such Confidential Information. If the Grantee does not receive a response from the James Hutton Institute within the 28-day period then the Grantee shall be entitled to proceed with the communication, publication or public statement without any amendment being required.
- 15.5 The Grantee shall notify the James Hutton Institute as soon as reasonably practicable if approached by the media about the Grant, or any matter related to it. The Grantee shall notify the James Hutton Institute as soon as reasonably practicable if approached by anyone about a matter related to the Grant which it reasonably believes would be considered sensitive by the James Hutton Institute.
- 15.6 The Grantee must not make any press announcement or otherwise publicise the Grant in any way, except in accordance with clause 15.4 above.
- 15.7 The Grantee must acknowledge the Plant Health Centre and the Scottish Ministers in any publications or events associated with this Grant by including the following statement: This work was commissioned by Scotland's Centre of Expertise for Plant Health Funded by Scottish Government through the Rural & Environment Science and Analytical Services (RESAS) Division under grant agreement No PHC####/## (the relevant grant number should be quoted). The Grantee must assist the James Hutton Institute/PHC with any additional reporting requirements the Scottish Ministers requests.

16. Data Protection

- 16.1 The James Hutton Institute will use information provided on the Application form for processing the proposal, the award of any consequential grant, and for the payment, maintenance and review of the Grant. Details of how the James Hutton Institute will process any Personal Data is available at <https://www.planthealthcentre.scot/privacy-notice>
- 16.2 To meet the James Hutton Institute's duties for public accountability and the dissemination of information, the James Hutton Institute may make the contents of funded research proposals available on the PHC website and other publicly available databases, in reports, documents and mailing lists.
- 16.3 After completion of the Grant, the James Hutton Institute may contact the Grant Holder concerning funding opportunities or events, or for the purposes of evaluation. In some instances, the James Hutton Institute may wish to authorise an affiliate organisation to contact the Grant Holder on behalf of the James Hutton Institute. It is taken that, by agreeing to this Contract, the Grantee consents to this on behalf of the Grant Holder. If the Grant Holder does not

agree to contact in this way, the Grant Holder should state this to the James Hutton Institute. Grant Holders may choose to opt out at any point, provided the Grant Holder complies with all other terms and conditions associated with the Contract.

- 16.4 This clause sets out the framework for the sharing of personal data between the parties as controllers. Each party acknowledges that one party (referred to in this clause as the **Data Discloser**) may disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 16.5 The parties agree and confirm that such data sharing is necessary and that each party has a valid lawful basis and legal power to share Personal Data prior to doing so. Details surrounding the exchange of Personal Data are documented in Annex 3 to this Contract, including without limitation, the purposes of processing, categories of personal data, categories of data subjects, lawful basis for data sharing, legal power of each party to permit data sharing and contact details of each party's data protection representative.
- 16.6 Each party shall comply with all the obligations imposed on a controller under the Data Protection Laws, and any material breach of the Data Protection Laws by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this Contract with immediate effect.
- 16.7 Each party shall:
- (a) ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
 - (b) give full information to any data subject whose personal data may be processed under this agreement of the nature of such processing. This includes giving notice that, on the termination of this Contract, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
 - (c) process the Shared Personal Data only for the Agreed Purposes;
 - (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality);
 - (f) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;
 - (g) not transfer any personal data received from the Data Discloser outside the UK unless the transferor ensures that (i) the transfer is to a country

approved under the applicable Data Protection Laws as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Laws; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Laws by providing an adequate level of protection to any personal data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Laws applies to the transfer.

16.8 Each party shall assist the other in complying with all applicable requirements of the Data Protection Laws. In particular, each party shall:

- (a) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
- (b) promptly inform the other party about the receipt of any data subject rights request;
- (c) provide the other party with reasonable assistance in complying with any data subject rights request;
- (d) subject to Clause 16.8(g), not disclose, release, amend, delete or block any Shared Personal Data in response to a data subject rights request without first consulting the other party wherever possible;
- (e) assist the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, personal data breach notifications, data protection impact assessments and consultations with the Information Commissioner or other regulators;
- (f) notify the Data Discloser without undue delay on becoming aware of any breach of the Data Protection Laws;
- (g) notwithstanding Clause 16.8(d), at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this Agreement unless required by law to store the Shared Personal Data;
- (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 16; and
- (j) provide the other party with a point of contact for all issues arising out of the Data Protection Laws.

17. Subcontracting

17.1 The James Hutton Institute approves the appointment of the Approved Subcontractors in respect of the obligations specified in Annex 2.

- 17.2 Other than the Approved Subcontractors, the Grantee may not Subcontract its obligations under this Contract without the prior written consent of the James Hutton Institute. Subcontracting of any part of this Contract shall not relieve the Grantee of any obligation or duty attributable to the James Hutton Institute under this Contract. The Grantee shall be responsible for the acts and omissions of its subcontractors as though they are its own.
- 17.3 Where the Grant is associated with more than one organisation (either with an Approved Subcontractor or as agreed in accordance with this clause 17), the basis of collaboration between the organisations must be set out in a formal agreement. It is the responsibility of the Grantee to put such an agreement in place as soon as reasonably practicable. Where any such subcontractor itself has any subcontractors who will be involved in the Project, the Grantee shall use reasonable endeavours to procure that an agreement is in place as soon as reasonably practicable. The terms of any such agreements under this clause 17.3 must not conflict with this Contract. A copy of any such agreement shall be provided to the James Hutton Institute on request.
- 17.4 Where the Grantee enters into a Subcontract the Grantee must ensure that a provision is included which:
- 17.4.1 requires payment to be made of all sums due by the Grantee to the subcontractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the subcontract requirements and provides that, where the James Hutton Institute has made payment to the Grantee in respect of specific services under the Project and the subcontractors invoice relates to such services under the Project then, to that extent, the invoice must be treated as valid and, provided the Grantee is not exercising a right of retention or set-off in respect of a breach of contract by the subcontractor or in respect of a sum otherwise due by the subcontractor to the Grantee, payment must be made to the subcontractor without deduction;
 - 17.4.2 notifies the subcontractor that the Subcontract forms part of a larger contract for the benefit of the Scottish Ministers and that should the subcontractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the subcontractors to the Scottish Ministers;
 - 17.4.3 other than in respect of Approved Subcontractors, requires that all contracts with subcontractors and suppliers which the subcontractor intends to procure, and which the subcontractor has not before the date of this Contract, already planned to award to a particular supplier are, unless not required in accordance with applicable law, advertised through the Public Contract Scotland procurement portal (www.publiccontractsscotland.gov.uk) and awarded following a fair, open, transparent and competitive process proportionate to the nature and value of the contract; and
 - 17.4.4 is in the same terms as that set out in this clause 17.4 (including for the avoidance of doubt this clause 17.4.4) subject only to modification to refer to the correct designation of the equivalent party as the Grantee and subcontractor as the case may be.

- 17.5 Other than for Approved Subcontractors, the Grantee must ensure that all contracts with subcontractors and suppliers which the Grantee intends to procure are, unless not required in accordance with applicable law, advertised through the Public Contracts Scotland procurement portal (www.publiccontractsscotland.gov.uk) and awarded following a fair, open, transparent and competitive process proportionate to the nature and value of the contract.
- 17.6 Where requested by the James Hutton Institute, copies of any Subcontract must be sent by the Grantee to the James Hutton Institute as soon as reasonably practicable.
- 17.7 The Grantee is the lead contractor of the Project and as such, the Grantee agrees that: i) it is solely responsible for ensuring that the Project is delivered in accordance with Good Industry Practice and the terms of this Contract; and ii) it will be the sole point of contact for the James Hutton Institute in respect of all matters relating to the Project.
- 17.8 The Grantee undertakes that it has or will enter into all necessary agreements (including data sharing agreements where required to permit the sharing of personal data with the Approved Subcontractors) to allow for the undertaking of the Project in accordance with this Contract. The Grantee shall ensure that such agreements contain provisions materially the same as those contained within this Contract and shall enforce at its discretion (acting reasonably at all times) such any contractual obligations as necessary to ensure that the Project is provided in accordance with this Contract.

18. Supply Chain Transparency and Protections

- 18.1 Where applicable and relevant to this Contract, the Grantee shall, and shall use reasonable endeavours to procure that any of the Grantee Suppliers involved in the Project (including, but not limited to, any subcontractors) shall, prepare and maintain a written code of conduct or policy that addresses the following:
- 18.1.1 child labour,
 - 18.1.2 forced labour,
 - 18.1.3 working hours,
 - 18.1.4 wages,
 - 18.1.5 discrimination,
 - 18.1.6 health and safety,
 - 18.1.7 freedom of association,
 - 18.1.8 collective bargaining,
 - 18.1.9 disciplinary practices,
 - 18.1.10 humane treatment of workers,
 - 18.1.11 training,

18.1.12 whistleblowing

18.1.13 engagement with NGOs, and

18.1.14 worker grievance procedures.

18.2 The Grantee shall provide the James Hutton Institute with a copy of its and its Grantee Suppliers applicable codes of conduct; policies; a list of suppliers (including, but not limited to any suppliers of mined substances) for this Project together with any other relevant information about such Grantee Suppliers (acting reasonably); or any engagement with external organisations on request, if relevant to this Contract; and any changes to the foregoing as soon as reasonably practicable.

18.3 The Grantee will as far as reasonably practicable comply with any request from the James Hutton Institute to submit an annual written report from the Commencement Date to the James Hutton Institute outlining the Grantee's objectives, targets and specific actions for monitoring and improving labour standards and working conditions within the Grantee's Supply Chain. For the avoidance of doubt, the Grantee has no obligation to report on anything not related to the Project..

18.4 The Grantee will use its reasonable endeavours to assist with any request from the James Hutton Institute to undertake a desk based defined program of supply-chain audits on the Grantee and the Grantee's Suppliers, which will be undertaken by a third party accredited certification body and independently verified. The James Hutton Institute shall pay the full cost and expense of any audit. If such an audit takes place then the Grantee will, and will procure that the Grantee Suppliers will, provide documents reasonably required in line with this Agreement. The James Hutton Institute will use reasonable endeavours to ensure that any audit is carried out in a manner which will keep to a reasonable minimum any inconvenience to the Grantee. The Grantee will take reasonable notice, and will procure that the Grantee Suppliers take reasonable notice, of any feedback from the James Hutton Institute in relation to the performance of the Project. The James Hutton Institute shall ensure that any external auditor is subject to appropriate confidentiality obligations prior to any such audit.

19. Disclaimer

19.1 The James Hutton Institute and Scottish Ministers accept no liability, financial or otherwise, for expenditure or liability arising from this Grant, except as set out in this Contract, or otherwise agreed in writing.

19.2 If the Project is terminated or reduced in value, no liability for payment or redundancy or any other compensatory payment for the dismissal of staff who the Grant funded is accepted. But the parties will negotiate with regard to other contractual commitments and concerning the disposal of assets acquired under the Grant.

20. Cyber Security Requirements

20.1 The Grantee confirms that it shall meet and comply with the Cyber Essentials or equivalent, Cyber Essentials Plus or equivalent and ISO27001 or equivalent in connection with the provision of the Project and the Contract (including in

respect of any certification or accreditation) or, where such a Grantee cannot comply with the specific Cyber Security Requirements, it will implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk.

- 20.2 The Grantee shall use reasonable endeavours to implement and maintain all security measures:
 - 20.2.1 as may be required under applicable laws (including the Network and Information Systems Regulations 2018);
 - 20.2.2 to enable it to discharge its obligations under this clause 20; and
 - 20.2.3 to prevent the likelihood of Cyber Security Incidentsin all cases in accordance with Good Industry Practice.
- 20.3 The Grantee shall notify the James Hutton Institute promptly of any changes in its ability to meet the Cyber Security Requirements, including any changes to certifications and accreditations.
- 20.4 The Grantee shall assist the James Hutton Institute to comply with any applicable cyber security requirements, codes, policies and practices in connection with the Project and/or the Contract.
- 20.5 The Grantee shall notify the James Hutton Institute as soon as reasonably practicable after becoming aware of or believing that a Cyber Security Incident has or may have taken place in relation to the Project and shall provide full details of the incident and any mitigation measures already taken and intended to be taken by it and (where applicable) any mitigation measures recommended by it to be taken by the James Hutton Institute. Where such initial notification is not in writing, then the Grantee shall provide the James Hutton Institute with a written notification setting out the details required under this clause 20 promptly and in any case within twelve (12) hours from the initial notification.
- 20.6 Following a Cyber Security Incident related to the Project, the Grantee shall:
 - 20.6.1 use its reasonable endeavours to mitigate the impact of the Cyber Security Incident;
 - 20.6.2 investigate the Cyber Security Incident completely and promptly, and shall keep the James Hutton Institute fully informed of the progress and findings of its investigation;
 - 20.6.3 where required to do so, inform any applicable regulator of the Cyber Security Incident; and
 - 20.6.4 take any action deemed necessary by the James Hutton Institute in the circumstances, including complying with any additional security measures deemed appropriate by the James Hutton Institute.
- 20.7 The Grantee shall perform its obligations under this clause 20 at no additional charge to the James Hutton Institute, unless it can show that the Cyber Security Incident was caused solely by an act or omission of the James Hutton Institute.

- 20.8 Promptly upon request, the Grantee shall provide to the James Hutton Institute such information and records in connection with the Grantee's obligations under this clause 20 as the James Hutton Institute may request.
- 20.9 The Grantee agrees (and will make all reasonable efforts to procure that its subcontractors agree) that the James Hutton Institute and/or the Scottish Ministers, its agents and its representatives may conduct such audits as are considered necessary by the James Hutton Institute and/or the Scottish Ministers acting reasonably, including for the following purposes:
- 20.9.1 to ascertain the impact of any Cyber Security Incident;
 - 20.9.2 to review and verify the integrity, confidentiality and security of any data relating to the Contract; or
 - 20.9.3 to review the Grantee's and/or any subcontractor's compliance with its obligations under this clause 20.
- 20.10 The Grantee shall (and shall ensure that any subcontractor shall) provide the James Hutton Institute and/or the Scottish Ministers, their agents and representatives with all reasonable co-operation and assistance in relation to audits, including:
- 20.10.1 all data and/or records requested by the James Hutton Institute and/or the Scottish Ministers;
 - 20.10.2 access to any relevant premises and to any equipment owned/controlled by the Grantee, any associated or group company and any subcontractor and, where such premises and/or equipment are out-with the control of the Grantee, shall secure sufficient rights of access for the James Hutton Institute and/or the Scottish Ministers, their agents and representatives as are necessary to allow audits to take place; and
 - 20.10.3 access to any relevant individuals.
- 20.11 The James Hutton Institute and/or the Scottish Ministers shall use all reasonable endeavours to:
- 20.11.1 provide at least 10 days' notice of its intention to conduct an audit (but is not obliged to do so); and
 - 20.11.2 ensure that the conduct of each audit does not unreasonably disrupt the Grantee and/or subcontractor or delay the performance of the Contract.
- 20.12 The parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 20 unless an audit identifies a breach of the terms of this clause 20 by the Grantee and/or subcontractor, in which case the Grantee shall reimburse the James Hutton Institute and/or the Scottish Ministers on demand for all the James Hutton Institute's/Scottish Ministers' reasonable costs and expenses incurred in conducting the audit.

- 20.13 A breach of this clause 20 by the Grantee is a material breach for the purposes of clause 31.3.3.
- 20.14 If the Grantee fails to comply with the provisions of this clause 20, the James Hutton Institute may take any action it considers appropriate or necessary (and the Grantee shall comply with the James Hutton Institute's requests in this respect), including:
- 20.14.1 suspending the whole or any part of the Grantee's obligations under the Contract;
 - 20.14.2 requiring that specific subcontractors connected with such breach be removed from their involvement with the Project and the Contract and cease to have any access to the James Hutton Institute's and/or the Scottish Ministers' Confidential Information and any Personal Data Processed in connection with the Project under the Contract;
 - 20.14.3 requesting the Grantee return and/or arrange the evidenced secure and permanent destruction of the James Hutton Institute's and/or the Scottish Ministers' Confidential Information and any Personal Data Processed in connection with the Project under the Contract; and
 - 20.14.4 implementing additional or alternative measures, both technical and organisational, to protect and secure the James Hutton Institute's and/or the Scottish Ministers' Confidential Information and any Personal Data Processed in connection with the Project under the Contract.

21. Warranties and Representations

- 21.1 The Grantee represents that to its reasonable knowledge and belief:
- 21.1.1 it has full capacity and authority and all necessary consents to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised individual;
 - 21.1.2 in entering the Contract it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law or any other kind referred to in the Public Contracts (Scotland) Regulations 2015;
 - 21.1.3 it has not committed any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committed any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities;
 - 21.1.4 as at the Commencement Date, all information contained in the Project proposal remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the James Hutton Institute prior to execution of the Contract;
 - 21.1.5 no claim is being asserted and no litigation, alternative dispute resolution procedure or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or

threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;

- 21.1.6 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- 21.1.7 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Grantee or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Grantee's assets or revenue;
- 21.1.8 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 21.1.9 in the 3 years prior to the Commencement Date:
 - (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
- 21.1.10 it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- 21.1.11 it has made appropriate inquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract;
- 21.1.12 it has in place appropriate technical and organisational measures to safeguard any Confidential Information provided by the James Hutton Institute;
- 21.1.13 there are no actual or potential conflicts between the interests of the Grantee and the duties owed to the James Hutton Institute under the Contract, save as may have been specifically disclosed in writing to the James Hutton Institute prior to execution of the Contract; and
- 21.1.14 it is deemed to have inspected any premises at which the services are to be performed as set out in the proposal (the 'Premises') before submitting the proposal so as to have understood the nature and extent of the Project to be carried out and is deemed to be satisfied in relation to all matters connected with the Project and the Premises.

22. Indemnity

- 22.1 Subject to clause 23, the Grantee shall indemnify the James Hutton Institute against all claims, proceedings, actions, damages, costs, charges, expenses and any other liabilities which may arise out of, or in consequence of, any Default of the Grantee.
- 22.2 The indemnity contained in clause 22.1 shall not apply to the extent that the claims, proceedings, actions, damages, costs, charges, expenses is caused by the negligent or wilful act or omission of the James Hutton Institute.

23. Limitation of Liability

- 23.1 Neither party is liable to the other party under the Contract for:
 - 23.1.1 any loss of profits, business, revenue or goodwill;
 - 23.1.2 any indirect or consequential loss or damage; or
 - 23.1.3 any circumstances arising under clause 14.1.5.
- 23.2 Clause 23.1 does not exclude any liability of the Grantee for additional, operational, administrative costs or expenses or wasted expenditure resulting from the Default of the Grantee where such Default has resulted in a claim from the Scottish Ministers to the James Hutton Institute for additional, operational, administrative costs or expenses or wasted expenditure.
- 23.3 The aggregate liability of either party to the other under the Contract is limited to 150% of the value the Contract.
- 23.4 But neither party excludes or limits liability to the other party for:
 - 23.4.1 death or personal injury caused by its negligence; or
 - 23.4.2 wilful misrepresentation.

24. Insurances

- 24.1.1 The Grantee, unless otherwise exempt (such exemption to be confirmed by production of an exemption certificate) must effect and maintain with a reputable insurance company:
 - 24.1.2 public liability insurance in the sum of not less than **five million pounds (£5,000,000)**;
 - 24.1.3 professional indemnity insurance in the sum of not less than **two million pounds (£2,000,000)**; and
 - 24.1.4 employer's liability insurance in accordance with any legal obligation for the time being in force.
- 24.2 Such insurance must be maintained for the duration of the Contract and for a minimum of 5 years following the expiry or termination of the Contract subject to such insurances being available in the market at an economically viable rate or exempt by law under HM Government policy changes relevant to the Grantee.

- 24.3 The Grantee must give the James Hutton Institute, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

25. Compliance with the Law etc.

- 25.1 In providing the Project and otherwise when performing this Contract, the Grantee must comply in all respects with:
- 25.1.1 all applicable law;
 - 25.1.2 any applicable requirements of regulatory bodies; and
 - 25.1.3 Good Industry Practice.
- 25.2 The Grantee is responsible for the acts and omissions of all Grantee Representatives relating to the Project as though such acts and omissions are the Grantee's own.
- 25.3 The Grantee must use reasonable endeavours to ensure that all Grantee Representatives:
- 25.3.1 are appropriately experienced, skilled, qualified and trained;
 - 25.3.2 carry out their activities connected with the Contract faithfully and diligently and with all with due skill, care and diligence; and
 - 25.3.3 obey all lawful and reasonable directions of the James Hutton Institute when carrying out activities under the Contract, provided that such directions do not affect the ability to undertake the Project within the Duration or within the Grant. Where such directions will likely affect the ability to undertake the Project within the Duration or within the Grant, the parties shall agree, acting reasonably, how best to proceed.
- 25.4 The Grantee must promptly make available its statutory health and safety policy statement to the Scottish Ministers on request.
- 25.5 The Grantee must not commit or attempt to commit any offence:
- 25.5.1 under the Bribery Act 2010;
 - 25.5.2 of fraud, uttering, or embezzlement at common law; or
 - 25.5.3 of any other kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.
- 25.6 Breach of clause 25.5 is a material breach for the purposes of clause 31.3.3.
- 25.7 In performing its obligations under this Contract, the Grantee shall:
- 25.7.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including the Modern Slavery Act 2015 and the Human Trafficking and Exploitation (Scotland) Act 2015;

- 25.7.2 not engage in any activity, practice or conduct that would constitute an offence under the Human Trafficking and Exploitation (Scotland) Act 2015 if such activity, practice or conduct were carried out in the UK;
 - 25.7.3 include in contracts with its direct subcontractors and contractors' provisions which are at least as onerous as those set out in this clause;
 - 25.7.4 notify the James Hutton Institute as soon as reasonably practicable after it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Project;
 - 25.7.5 maintain a complete set of records of all goods and services provided to the James Hutton Institute; and
 - 25.7.6 provide the James Hutton Institute and its third party representatives access to such records.
- 25.8 The Grantee represents and warrants that it has not been convicted of any offence involving slavery and human trafficking nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
 - 25.9 The Grantee shall prepare and deliver to the James Hutton Institute, each year on request (from the Commencement Date), an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.
 - 25.10 The James Hutton Institute may terminate this Contract with immediate effect by giving written notice to the Grantee if the Grantee commits a breach of this clause.
 - 25.11 The Grantee undertakes to abide and procure where applicable that the Grantee's employees abide by the provisions of the Official Secrets Acts 1911 to 1989.

26. Tax Arrangements

- 26.1 Where the Grantee is liable to be taxed in the UK in respect of consideration received under this Contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 26.2 Where the Grantee is liable to National Insurance Contributions (NICs) in respect of consideration received under this Contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 26.3 The James Hutton Institute may, at any time during the term of this Contract, request the Grantee to provide information which demonstrates how the Grantee complies with sub-clauses 26.1 and 26.2 above or why those clauses do not apply to it.

- 26.4 A request under sub-clause 26.3 above may specify the information which the Grantee must provide and the reasonable period within which that information must be provided.
- 26.5 The James Hutton Institute may supply any information which it receives under this clause 26 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 26.6 The Grantee shall take all reasonable steps to ensure the observance of the provisions of this clause 26 by all of their servants, employees, agents, consultants and subcontractors.
- 26.7 Where the Grantee enters into any Subcontract with any of its servants, employees, agents, consultants and/or subcontractors, the Grantee must ensure that a provision is included which is in the same terms as this clause 26.

27. Discrimination

- 27.1 The Grantee must not unlawfully discriminate against any person within the meaning of the Equality Act 2010 in its activities relating to the Contract or any other contract with the James Hutton Institute.

28. Blacklisting

- 28.1 The Grantee must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the James Hutton Institute to terminate the Contract.

29. Sustainability etc.

- 29.1 The Grantee shall use reasonable endeavours to perform its obligations under this Contract in a manner so as to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimize the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment. The Grantee shall make all reasonable efforts to minimise its use of packaging and avoid the use of packaging which consumes a disproportionate amount of energy during manufacture, use, or disposal or which contains materials derived from threatened species or threatened environments. If requested by the James Hutton Institute, the Grantee shall provide the James Hutton Institute with a copy of its environmental policy.
- 29.2 The Grantee is expected to have appropriate standards for its organisation and its Grantee Supply Chain regarding legal, ethical and social issues. This should include for example: health and safety, security of employment rights, equality and fair trade, in particular in low cost or developing countries. If requested by the James Hutton Institute, the Grantee shall provide the James Hutton Institute with a copy of its ethical sourcing policy.

30. Conflicts of interest

- 30.1 The Grantee must take appropriate steps to ensure that the James Hutton Institute is not placed in a position where, in the reasonable opinion of the James Hutton Institute, there is an actual or potential conflict between the interests of the Grantee and the duties owed to the James Hutton Institute under the Contract.
- 30.2 The Grantee must disclose by notice to the James Hutton Institute full particulars of any actual or potential conflict of interest which may arise and must take such steps as are necessary to avoid or remove the conflict of interest.
- 30.3 Breach of this clause by the Grantee is a material breach for the purposes of clause 31.3.3.

31. Termination

- 31.1 The James Hutton Institute may terminate this Contract if the Grantee, or a Grantee Representative, fails to comply in the performance of the Project with legal obligations in the fields of environmental, social, labour, human rights or employment law or if any of the termination events (involving substantial modification of the contract between the Scottish Ministers and the James Hutton Institute or contract award despite the existence of exclusion grounds) in the contract between the Scottish Ministers and the James Hutton Institute occur. If the Grantee enters into any Subcontract under this Contract (including, but not limited to with an Approved Subcontractors), a provision having the same effect as this clause 31.1 must be included to permit the Grantee to terminate such a Subcontract.
- 31.2 The James Hutton Institute may terminate the Contract by giving thirty (30) days' written notice to the Grantee.
- 31.3 Either party may terminate the Contract by notice to the other with immediate effect if the other Party commits a Default and:
 - 31.3.1 the other party has not remedied the Default to the satisfaction of the terminating party within 20 Working Days, or such other period as may be specified by the terminating party, after issue of a notice specifying the Default and requesting it to be remedied;
 - 31.3.2 the Default is not in the reasonable opinion of the terminating party, capable of remedy; or
 - 31.3.3 the Default is a material breach of the Contract.

For the avoidance of doubt, delay of payment up to thirty (30) days by the James Hutton Institute shall not constitute a Default, however non-payment beyond this time frame does constitute a Default, provided that, where the James Hutton Institute are not in receipt of funds from the Scottish Ministers, non-payment by the James Hutton Institute shall not constitute a Default.

- 31.4 The James Hutton Institute may terminate the Contract upon written notice in the event that the Main Contract is terminated or if the funding from the Scottish

Ministers is suspended, delayed, withdrawn or reclaimed by the Scottish Ministers for any reason.

32. Termination on Insolvency and Change of Control

- 32.1 The Grantee shall notify the James Hutton Institute in writing immediately, and the James Hutton Institute may terminate the Contract with immediate effect by notice, where in respect of the Grantee:
- 32.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignation for the benefit of, its creditors;
 - 32.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - 32.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
 - 32.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - 32.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
 - 32.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
 - 32.1.7 being a "small company" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to schedule A1 to the Insolvency Act 1986;
 - 32.1.8 a debt relief order is entered into; or
 - 32.1.9 any event similar to those listed above occurs under the law of any other jurisdiction.
- 32.2 The Grantee must notify the James Hutton Institute whenever it proposes to undergo a change of Control, or a change of control is likely to occur and immediately following a change of Control that has occurred. The James Hutton Institute may terminate the Contract by notice with immediate effect within 6 months of:
- 32.2.1 being notified that a change of Control has occurred; or
 - 32.2.2 where no such notification has been given, the date that the James Hutton Institute becomes aware of the change of control.

- 32.3 But the James Hutton Institute may not terminate the Contract under clause 32.2 where approval of the change of control has been granted by notice by the James Hutton Institute.
- 32.4 The following clauses shall survive expiry or termination of the Contract: 1, 5, 8, 9, 11, 12, 13, 14, 15, 16, 19, 20, 22, 23, 24, 25, 33, 38, 39 and this clause 32.4.

33. Consequences of Expiry or Termination

- 33.1 On expiry or termination of the Contract, the Grantee must:
- 33.1.1 immediately return to the James Hutton Institute all Confidential Information belonging to the James Hutton Institute and any Deliverables in its possession;
 - 33.1.2 destroy or delete any copies of Confidential Information belonging to the James Hutton Institute (whether physical or electronic) in its possession apart from: a) Confidential Information that is required to be retained by the Grantee by law, including by governmental order, decree, regulation or rule b) Confidential Information which has been automatically backed-up on the computer systems of the Grantee for the period the Grantee normally archives backed-up computed records, provided that such records shall always be subject to clause 13;
 - 33.1.3 assist the James Hutton Institute in all reasonable regards in relation to any of its exit management obligations to the Scottish Ministers;
 - 33.1.4 assist the James Hutton Institute in all reasonable regards in relation to any handover of the Project to the James Hutton Institute or a third party.
- 33.2 On expiry or termination of the Contract, James Hutton Institute will pay all valid invoices received for any work undertaken under this Contract prior to the date of expiry or termination plus all non-cancellable commitments validly entered into before the date the notice of termination was received.

34. Force Majeure

- 34.1 Apart from a payment liability, neither party is liable to the other party for any delay in performing, or other failure to perform, its obligations under the Contract to the extent that such delay or failure is a result of Force Majeure. Nonetheless, each party must use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if Force Majeure prevents either party from performing its material obligations under the Contract for a period in excess of 3 months either party may terminate the Contract with immediate effect by notice.
- 34.2 Any delay or other failure by the Grantee in performing its obligations under the Contract which results from any failure or delay by a Grantee Representative is only to be regarded as due to Force Majeure if that Grantee Representative is itself impeded by Force Majeure from complying with an obligation to the Grantee.

- 34.3 If either party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any delay or failure on its part as described in clause 34.1, it must immediately notify the other party of the Force Majeure and the estimated period for which the failure or delay is to continue.
- 34.4 The only events that afford relief from liability for failure or delay under the Contract are Force Majeure events.

35. Severability

- 35.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision is severed and the remainder of the provisions of the Contract continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

36. Waiver and Cumulative Remedies

- 36.1 Any failure of either party to insist upon strict performance of any provision of the Contract, or the failure of either party to exercise, or any delay in exercising, any right or remedy does not constitute a waiver of that right or remedy and does not cause a diminution of the obligations established by the Contract.
- 36.2 Accordingly, no waiver is effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with clause 37.
- 36.3 A waiver of any Default is not a waiver of any subsequent Default.
- 36.4 The rights and remedies provided by the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy is not to be deemed an election of such remedy to the exclusion of other remedies.

37. Notices

- 37.1 Any notice given to a party under or in connection with this Contract must be:
- 37.1.1 Given in writing
 - 37.1.2 Addressed in accordance with clause 37.3; and
 - 37.1.3 Sent by letter (delivered by hand, first class post or by recorded delivery or special delivery), or email.
- 37.2 Provided the relevant communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:
- 37.2.1 2 Working Days after the day on which the letter was posted; or
 - 37.2.2 4 Working Hours after the communication was sent, in the case of email.
- 37.3 For the purposes of this clause, the address of each party is:
- 37.3.1 For the James Hutton Institute:

James Hutton Institute, Errol Road, Invergowrie, Dundee DD2 5DA

For the attention of: Director of Finance

Email: hugh.darby@hutton.ac.uk

37.3.2 For the Grantee:

The Grantee Notice Address

37.4 Either party may change its address details by serving a notice in accordance with this clause 37.

37.5 Notices under clause 32.1 (Termination on Insolvency or Change of Control) may be sent to the Grantee's trustee, receiver, liquidator or administrator, as appropriate.

38. Dispute Resolution

38.1 The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.

38.2 Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, which cannot be resolved in accordance with clause 38.1, shall be determined by the appointment of a single arbitrator to be agreed between the parties, and failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.

38.3 Any arbitration under clause 38.2 is subject to the Arbitration (Scotland) Act 2010.

39. Miscellaneous

39.1 At all times during the Duration, the Grantee is an independent service provider and nothing in this Contract establishes a contract of employment, a relationship of agency or partnership or a joint venture between the parties or between the James Hutton Institute and the Grant Holder. Neither party is authorised to act in the name of, or on behalf of, or otherwise bind the other party save as expressly permitted by this Contract.

39.2 The Grantee may not assign its interest in this Contract or any part of it without the prior written consent of the James Hutton Institute.

39.3 This Contract may be amended only by the written agreement of both parties. Neither Party may unilaterally amend this Contract.

39.4 This Contract is governed by the Law of Scotland.

39.5 This Contract contains the whole agreement between the James Hutton Institute and the Grantee in relation to the Grant. In the event of any conflict

between these terms and conditions and the Offer of Grant, the Offer of Grant shall take precedence.

- 39.6 The James Hutton Institute and the Grantee intend that the Scottish Ministers can enforce this Contract. Except as otherwise set out in this clause 39.6, the parties do not intend that any third party can enforce this Contract.
- 39.7 Neither the James Hutton Institute or the Grantee will use the other's name or the name of any of the Key Personnel or the other party's logo in any press release, or for any other purpose, without first obtaining the other party's written consent.

This is the Annex referred to in the foregoing PHC Funding Terms and Acceptance of Offer between the Grantee and the James Hutton Institute

Annex 1

Grant

The Grant value represents the portion of funds requested by the Grantee and any Subcontractors (excluding Hutton) as detailed in the project proposal. The Grantee shall be responsible for paying any sums due to those Subcontractors named in the proposal. The total to be paid to the Grantee does not include any sum allocated to Hutton, which shall be retained by Hutton. All sums are exclusive of VAT.

The funds will be awarded with 80% paid on signature of the Offer of Grant. The final payment will not be approved until all outputs have been signed off by the PHC. All sums are exclusive of VAT. Invoices submitted without a valid Purchase Order number will not be paid. Payments shall be made to the Grantee within thirty days of receipt of a valid invoice.

This is the Annex referred to in the foregoing PHC Funding Terms and Acceptance of Offer between the Grantee and the James Hutton Institute

Annex 2

Reporting, Objectives and Deliverables

The main objectives/expected outcomes/Deliverables of the Project (the "Agreed Purpose") which should be reported to the Centre Manager by the Grantee will be listed in Annex 2.

This is the Annex referred to in the foregoing PHC Funding Terms and Acceptance of Offer between the Grantee and the James Hutton Institute

Annex 3

DATA SHARING PROVISION

Purpose of Data Sharing	To administer the Grant.
Why is Data Sharing necessary?	To administer the Grant.
In what way will it benefit individuals or society?	To allow research to be undertaken in relation to the Project.
Shared Personal Data	[Name, email address, phone number]
Category of Data Subjects	[Grant Holder and other individuals involved in undertaking the Project]
Lawful basis of James Hutton Institute	Art 6 of UK GDPR – Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller Art 9 of UK GDPR (if applicable) – N/A Data Protection Act 2018 (if applicable) – N/A
Lawful basis of Grantee	Art 6 of UK GDPR – Art 9 of UK GDPR (if applicable) – Data Protection Act 2018 (if applicable) -
Legal Power of James Hutton Institute	Implied power permitting data sharing derived from the duty to develop research in the public interest to the extent that research is underpinned by public funding.
Legal Power of Grantee	[insert]
DPO (or data protection contact) for James Hutton Institute	Thorntons Law LLP, Whitehall House, Yeaman Shore, Dundee DD1 4BJ. dpo@hutton.ac.uk
DPO (or data protection contact) for Grantee	[insert]

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