Call Down Framework Agreement

**Between:**

**THE UNIVERSITY COURT OF THE UNIVERSITY OF ST ANDREWS**, a charitable body registered in Scotland under the registration number SC013532 and incorporated by the Universities (Scotland) Act 1889, as amended by the Universities (Scotland) Act 1966, and having its principal office at College Gate, North Street, St Andrews, Fife KY16 9AJ (the “**University**"); and

[**INSERT FULL LEGAL NAME AND ADDRESS OF INSTITUTION]** (the "**Provider**")

**Background:**

1. JHI has received funding from the Scottish Ministers in relation to the Centre of Expertise for Waters (CREW) research activities under the CREW Funding Terms;
2. In terms of the Prime Contract, the University received certain CREW Funding from JHI and is responsible for disbursing these funds directly to Higher Education Institutions (HEIs);
3. The University, as a party to the Prime Contract, may wish to subcontract certain services it is obliged to deliver under the Prime Contract to the Provider further to a Request made under this Agreement; and
4. Subject to its acceptance of the University’s Request, the Provider shall provide the Services to the University in accordance with the terms of this Agreement.

**Now therefore it is agreed:**

1. **DEFINITIONS**
   1. In this Agreement (including the Recitals), unless the context otherwise requires, the following expressions shall have the meanings set out opposite them:-

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| **Agreement** | means this framework agreement. |
| **Commencement Date** | means [insert date this Agreement will commence], notwithstanding the date or dates hereof. |
| * + - 1. **Controller** (or **data controller**), **Processor** (or **data processor**), **Data Subject**, **international organisation**, **Personal Data** and **processing** | all have the meaning given to those terms in DP Laws (and related terms such as “process” shall have the corresponding meanings). |
| **CREW Funding Terms** | means the agreement entered into between JHI and the Scottish Ministers dated 9 March 2018 which governs use of funding in relation to CREW activities |
| **CREW Funding** | means the funding awarded to JHI by Scottish Ministers pursuant to the CREW Funding Terms. |
| **Data Subject Request** | means a request made by a Data Subject to exercise any rights of Data Subjects under DP Laws. |
| **DPIA** | means a Data Protection Impact Assessment, as defined in DP Laws. |
| **DP Laws** | 1. means any applicable law relating to the processing, privacy, and use of Personal Data, as applicable to the Controller, the Processor and/ or the Services provided under this Agreement, including:    1. the Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (“**GDPR**”), and/or any corresponding or equivalent national laws or regulations;    2. the UK Data Protection Act 1998, and any successor legislation which implements or replaces the GDPR in the UK; and    3. any judicial or administrative interpretation of them, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Supervisory Authority. |
| **Foreground IP** | means all Intellectual Property Rights and Know How generated, or otherwise collected or collated, arising, identified or first reduced to practice, in the course of the Services. |
| **Intellectual Property Rights** | means intellectual property rights including any copyright, moral rights, patents, database rights, trade marks, designs and design rights (registered and unregistered), utility models, supplementary protection certificates and all rights of a similar nature in any part of the world, and applications and the right to apply for registration of any intellectual property rights. |
| **Key Personnel** | means the Provider’s personnel identified in the applicable Call-Off Contract as being key to the performance of the Services. |
| **Know How** | means all unpatented technical and other information which is not in the public domain regardless of how such information is collected or recorded, including inventions, data, designs, formulae, compounds, methods, models, research plans, procedures, results of experimentation and testing (including results of research or development), processes (including manufacturing processes, specifications and techniques), analytical and quality data, data analyses and reports (and for this purpose, the fact that an item is known to the public shall not be taken to exclude the possibility that a compilation including the item, and/or a development relating to the item, is (and remains) not known to the public). |
| **JHI** | means The James Hutton Institute, a company limited by guarantee and registered in Scotland under number SC374831 and having its registered office at Invergowrie, Dundee DD2 5DA. |
| **Period** | means the period commencing on the Commencement Date and ending on 31 March 201[ ]. |
| **Personal Data Breach** | means a breach of security leading to the accidental or unlawful destruction, loss, alternation, unauthorised disclosure of, or access to, Protected Data transmitted, stored or otherwise processed. |
| **Prime Contract** | means the agreement between the University and JHI dated [insert] as amended from time to time under which the University receives CREW Funding from JHI, a summary of terms will be provided by the University on request. |
| **Processing Instructions** | has the meaning given to it in clause 15.4.1 of this Agreement. |
| **Protected Data** | means:   * 1. in circumstances where the University is the Controller and the Provider is the Processor, University Personal Data; or   2. in circumstances where the Provider is the Controller and the University is the Processor, Provider Personal Data. |
| **Provider Personal Data**  **Request** | means Personal Data received from or on behalf of the Provider.  has the meaning set out in clause 2.1. |
| **Call-Off Contract** | has the meaning set out in clause 2.4 |
| **Schedule** | means the schedule annexed to and forming part of this Agreement. |
| **Services** | means the services to be provided by the Provider under this Agreement as set out in any Call-Off Contract. |
| **Sub-Processor** | means another processor engaged by the Processor for carrying out processing activities in respect of the Protected Data on behalf of the Controller, and authorised by Controller in accordance with clause 15.7. |
| **Supervisory Authority** | means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering DP Laws. |
| **University Personal Data** | means Personal Data received from or on behalf of the University. |
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* 1. Unless the context requires otherwise:
     1. any period of time from a specified date or day shall be calculated exclusive of that date or day;
     2. the words “include” or “including” or “in particular” are to be construed as meaning without limitation to the generality of the preceding words;
     3. words in the singular include the plural and vice versa and words for any gender shall include all genders;
     4. reference to persons shall be deemed to include references to natural persons, to firms, to partnerships, to companies, to corporations, to associations, to organisations, to trusts (in each case whether or not having separate legal personality) but references to individuals shall be deemed to be references to natural persons only.
  2. Unless otherwise stated, a reference to a clause or a Schedule or a part of a Schedule or a party or parties is reference to a clause in or a Schedule or a part of a Schedule or a party or parties to this Agreement.
  3. The Schedule shall form part of and shall be read together with this Agreement.
  4. Any reference in this Agreement to writing includes a reference to facsimile transmission, electronic mail or other comparable means of communication.
  5. To the extent that a term of this Agreement requires the performance by a party of an obligation “in accordance with DP Laws” (or similar) this requires performance in accordance with such DP Laws as are in force and applicable at the time of performance and, if the relevant obligation is not then a requirement under applicable DP Laws, it shall not apply until such time as it is so required.

1. **Services** 
   1. In the event that the University wishes, in its sole discretion, to subcontract Services to the Provider, the University shall notify the Provider and make a request to the Provider that it provide the Services in accordance with this Agreement (the “**Request**”). Nothing in this Agreement shall oblige the University to make any Request to the Provider at any time during the Period.
   2. There is no obligation on the Provider to accept any Request. However, if the Provider wishes to accept a Request, it shall notify the University of its acceptance within 48 hours following receipt of the Request. If the Provider fails to notify the University within 48 hours following receipt of the Request, the University shall be entitled, without giving any further notice to the Provider, to treat the Provider as having declined the Request. The University may, at its sole discretion, waive the 48 hour time limit in this clause 2.2.

* 1. Any Request shall contain: (i) details of the nature, scope and extent of the Services to be subcontracted to the Provider; (ii) the number of days contracted and the due date for the Services to be delivered to the University by the Provider; (iii) any specific deliverables that the Provider must provide in fulfilment of its obligations towards the University following acceptance of the University’s Request; (iv) any specific provisions that are to apply to the provision of the Services and (v) any specific reporting requirements required.
  2. If the Provider agrees to provide the services set out in a Request, the parties shall agree a call-off contract in the form set out in Part 1 of the Schedule (“**Call-Off Contract**”). Each agreed Call-Off Contract shall be signed and dated by or on behalf of each party. The terms set out in this Agreement shall be deemed to be incorporated into and form part of each Call-Off Contract. In the event of any inconsistency between the terms of a Call-Off Contract and the terms of this Agreement, the terms of this Agreement shall prevail except as expressly varied in the relevant Call-Off Contract.
  3. As between the parties, the satisfactory completion of delivery of the Services shall be subject to receipt by the University of confirmation from JHI that it is reasonably satisfied with the Services provided under the applicable Call-Off Contract.
  4. The Provider shall co-operate fully and promptly with the University in all matters relating to the Services and shall provide the Services with all reasonable care, skill and diligence, that is to say the care, skill and diligence of (i) a person with the general knowledge, skill and experience that may reasonably be expected of a person providing the Services; and (ii) of a person with the general knowledge, skill and care that the Provider Principal Investigator (PI) has.
  5. During the Period, the University may, at its discretion, serve any number of Requests on the Provider.
  6. The Provider will not, during the Period, do or omit to do anything in performance of the Services which would cause (i) JHI to be in breach of the CREW Funding Terms; or (ii) the University and/ or JHI to be in breach of any relevant legislation, rules, regulations and codes of practice (including EU procurement and state aid legislation).
  7. The Provider shall take all reasonable steps to avoid any changes of Key Personnel, but where the Provider considers it necessary to do so, it will give the University not less than one month’s notice of any intention to change any Key Personnel and the reasons for such change. If the University considers (acting reasonably) that any such change of Key Personnel will have a negative impact on the Provider’s ability to perform the Services, the University shall be entitled to terminate this Agreement forthwith on giving written notice to the Provider.
  8. The Provider acknowledges that under the Prime Contract, the University is obliged to procure a third party right for JHI to enforce certain terms of this Agreement and each Call-Off Contract entered into pursuant to this Agreement on the Provider. The Provider therefore agrees to execute the letter attached in Part 2 of the Schedule to this Agreement promptly following execution of this Agreement by both parties and do all things deemed reasonably necessary by the University to allow JHI to obtain the benefit of the relevant terms of this Agreement and each Call-Off Contract as specified in that letter.

1. **Payment** 
   1. The University hereby agrees to pay to the Provider a total fee for the Services in accordance with the relevant Call-Off Contract, which fee will be inclusive of VAT (or other applicable sales tax). For the avoidance of doubt the fees explicitly set out in the relevant Call-Off Contract are exhaustive and the Provider shall bear any costs associated with the provision of the Services other than as set out in the relevant Call-Off Contract.

* A Provider may choose to decline payment for a specified task.

* A “**day**” shall be deemed to be a period of eight hours, Monday to Friday (inclusive) but excluding public holidays.
  1. The Provider will raise an invoice in respect of the Services following receipt of written confirmation from the University that JHI is reasonably satisfied with the Services provided under the applicable Call-Off Contract. Should JHI not be satisfied with the Services, the University shall promptly communicate any relevant information from JHI to the Provider to enable the Provider to deliver the Services to the satisfaction of JHI. Subject to clause 3.3, payment by the University to the Provider will be due within thirty five (35) days following receipt of invoice(s) from the Provider.
  2. The payment obligation set out in clause 3.2 shall remain conditional at all times upon the University having received payment of the corresponding sum in respect of the Services under the Prime Contract.
  3. In no event shall the University be liable for payment to the Provider in the event the CREW Funding under the Prime Contract is withdrawn, suspended delayed or reclaimed as a result of a decision taken by Scottish Ministers. The University will notify the Provider as soon as it becomes aware of any actual or potential suspension, delay, withdrawal or reclaim of CREW Funding under the Prime Contract.
  4. If, as a result of a decision by the Scottish Ministers to reclaim the CREW Funding (in whole or in part), the University is required to make a repayment of CREW Funding to JHI under the Prime Contract, where such funds have been paid to the Provider, the Provider shall, upon the University’s written request, forthwith repay such funds as the University may direct to the University or such other person as the University may nominate within seven (7) days following receipt of written notice from the University requesting payment.
  5. If the Provider fails to pay any sum which may become due to the University or in accordance with Clause 3.5, then without prejudice to the University’s other rights and remedies, interest shall accrue on such overdue amounts at an annual rate equal to 2% per annum over the then current Bank of England base lending rate prevailing at the date of the University’s written notice requesting payment, commencing on the due date and continuing until fully paid.
  6. The Provider shall use the funds received by it under this Agreement solely for the purpose of performing the Services in accordance with this Agreement. The Provider will maintain during the Period adequate internal expenditure controls to ensure that the payment received under each Call-Off Contract is used at all times in accordance with that Call-Off Contract and this Agreement.

1. **AUDIT** 
   1. The Provider shall maintain complete and accurate records of the time spent and materials and equipment used by the Provider in providing the Services and of the Provider’s receipt, use and expenditure of any and all funds paid to it under each Call-Off Contract for six (6) years after the date on which the relevant expenditure occurs.

* 1. The Provider shall, on request, grant for the Period and for five (5) years thereafter, the University and, where required, JHI (and such other persons as JHI may reasonably specify from time to time, including Scottish Ministers and the Auditor General for Scotland) such access to those records as may reasonably be required and shall provide such reasonable assistance as the person conducting the inspection may require to inspect such records.

* 1. The Provider shall grant, on request, during the Period and five (5) years thereafter, JHI and the Scottish Ministers access to all documents produced in connection with the Services and any other information to which JHI or the Scottish Ministers may reasonably require access, as the case may be, to ensure that the Services are being conducted, or have been conducted, in a manner consistent with this Agreement.

1. **CONFIDENTIALITY**
   1. Subject to clause 5.2 below, both parties shall be obliged to keep strictly confidential and not to make use of howsoever or to disclose to any third party any information relating to the affairs of the other or the existence or content of this Agreement or any information otherwise arising out of the provision of the Services relating to the other party which may reasonably be regarded as or which it ought to regard as confidential otherwise than for the purposes of this Agreement without the prior written consent of the other.
   2. Information shall not be considered to be confidential if: (a) it is and can be shown to be already known to the receiving party at the date of disclosure; or (b) it subsequently becomes lawfully available to the receiving party; or (c) it is published in a patent specification or is otherwise in the public domain other than through default of the receiving party; or (d) it is required to be disclosed by law; or (e) is required to be disclosed to JHI in accordance with the Prime Contract; or (f) is required to be disclosed by JHI to the Scottish Ministers in accordance with the CREW Funding Terms.
   3. Upon termination or expiry of a Call-Off Contract, both parties shall return or destroy all confidential information belonging to the other which was disclosed by or on behalf of the other in connection with that Call-Off Contract within thirty (30) days following the date of termination of the relevant Call-Off Contract, except to the extent that either party reasonably requires to retain any such confidential information and/or copies thereof for record-keeping and/or compliance purposes and/or for the purposes.
   4. Upon termination or expiry of this Agreement, both parties shall return or destroy all confidential information belonging to the other within thirty (30) days following the date of termination of this Agreement, except to the extent that either party reasonably requires to retain any such confidential information and/or copies thereof for record-keeping and/or compliance purposes and/or for the purposes of performing any Services under any ongoing Call-Off Contract (if applicable).
   5. The terms of this Clause 5 shall survive termination or expiry of this Agreement for a period of five (5) years.
2. **REPORTING**
   1. The Provider shall promptly submit such interim reports regarding progress of the Services in such format and at such times as the University may reasonably require to the University and the CREW project manager at the following addresses: ecd2@st-andrews.ac.uk and [insert relevant CREW email address].
   2. The Provider shall provide the University with a final report summarising the outcomes and performance of the Services in such form and within such period of time as specified in the relevant Call-Off Contract or as otherwise notified by the University to the Provider from time to time (the “CREW Report”). Such CREW Reports will include such statistical and other information relating to the impact of the Services as the University may require.
   3. The University reserves the right to return to the Provider any interim or final report submitted by the Provider which is not, in the reasonable opinion of the University or its agents, satisfactory, either in form or content, having regard to the provisions of this Agreement. In the event that such a report is returned to the Provider, the Provider shall remedy any deficiencies identified by the University and submit a revised report at no additional cost to the University within twenty five (25) days following the date on which the University returned the report to the Provider or such other timescales as the University may specify (acting reasonably).
   4. For clarity, notwithstanding submission by the Provider of the CREW Report in accordance with clause 6.2, the Services shall not be deemed to have completed until such time as the Provider has received written confirmation from the University that the CREW Report has been approved by the JHI.
   5. The Provider will:
      1. promptly notify the University if it becomes aware of any irregular or fraudulent activity relating to or that may impact on the Services or use of the payments received under this Agreement and provide such information and assistance as the University may reasonably require in order to investigate such irregular or fraudulent activity; and
      2. promptly provide any additional information which the University, JHI and/or the Scottish Ministers reasonably requests in relation to this Agreement.
   6. The obligations contained in this Clause 6 shall survive expiry or termination howsoever arising of this Agreement for a period of five (5) years.
3. **Intellectual Property** 
   1. For the avoidance of doubt, all background information, Know How and Intellectual Property Rights in existence prior to the Commencement Date or generated, created or acquired outside the provision of the Services ("**background IPR**") shall remain the property of the party introducing such background IPR. Neither party shall be deemed to have any right or licence to use or access any of the other party’s background IPR other than as expressly set out in this Agreement or the applicable Call-Off Contract.
   2. Ownership of any and all Foreground IP shall be as set out in the applicable Call-Off Contract.
   3. The Provider shall ensure that it promptly and fully discloses to the University any and all Foreground IP.
   4. The Provider warrants and undertakes in favour of the University and JHI that nothing in the course of the performance of the Services under this Agreement will infringe any intellectual property rights of any third party.
   5. The Provider shall notify the University as soon as reasonably possible if it becomes aware that any use of the Foreground IP infringes or may infringe the rights of any third party.
   6. The University hereby grants to the Provider a limited, non-exclusive, non-transferrable, non-sub-licensable licence to use the CREW logo (a copy of which is appended to Part A of Part 3 of the Schedule) (“**CREW Logo**”) as may be required for the purpose of performing the Services provided that the Provider:
      1. submits all materials bearing the CREW Logo to the University for prior review;
      2. obtains the University’s prior written approval to such use of the CREW Logo, which may be withheld at the University’s sole discretion; and
      3. uses the CREW Logo solely in accordance with the branding guidelines (a copy of which is appended to Part B of Part 3 of the Schedule).

The Provider shall not be deemed to have any right or licence to use the CREW Logo other than as expressly set out in this Clause 7.6.

1. **PUBLICATION** 
   1. The parties agree that the key outcome of the Services shall be the production of the CREW Report. The Provider shall ensure that the CREW Report is:
      1. prepared to meet certain criteria as notified to it by the University from time to time; and
      2. (without prejudice to Clause 8.2.1) submitted to the University and JHI for review at least forty five (45) days prior to publication. In the event the University reasonably requires any amendments to the CREW Report, including such amendments as may be required to ensure compliance with such criteria as may have been provided to the Provider in accordance with Clause 8.1.1, the University shall notify the Provider of the required changes as soon as reasonably practicable and the Provider shall effect such changes to the CREW Report and re-submit the CREW Report to the University and JHI for review within such timescales as may be notified to it by the University.
   2. Under no circumstances shall the Provider make any press release or public disclosure concerning the Services under this Agreement without:
      1. submitting to the University and JHI a copy of such press release or public disclosure for review at least forty five (45) days prior to submission for publication. On request from the University, the Provider shall remove any information from the publication which is reasonably believed to be confidential information prior to submission for publication; and
      2. the University has given its written consent to the Provider that any such release or disclosure is permitted.
   3. The Provider shall ensure that all publicity materials in respect of each Call-Off Contract under this Agreement (including reports and publications) acknowledge the support given to CREW by the Scottish Ministers as follows:

“The work, undertaken on behalf of CREW, was funded by the Rural & Environment Science & Analytical Services Division of the Scottish Government.”

1. **Assignation and subcontracting**
   1. This Agreement, each Call-Off Contract and any agreement in respect of the provision of Services is personal to the Provider and the Provider shall not assign or transfer or purport to assign, transfer or sub-contract to any other person any of its rights or obligations under this Agreement, any Call-Off Contract or any other agreement in respect of the provision of Services without the prior consent of the University in writing, such consent not to be unreasonably withheld.
   2. In the event the University grants written permission for the Provider to subcontract all or part of the applicable Call-Off Contract, the Provider shall (i) ensure that the subcontractor enters into a written agreement on terms materially equivalent to this Agreement and (ii) remain responsible for the acts and/or omissions of the subcontractor as though they were the acts and/or omissions of the Provider. For the purposes of this Agreement, “sub-contractor” shall mean those third parties to whom the Provider sub-contracts responsibility for performance of any part of the Services and any third party to whom that third party sub-contracts responsibility for performance of any part of the Services.
   3. Notwithstanding the foregoing, the University may at any time, on written notice to the Provider, transfer or assign all or any of its rights and/or obligations under this Agreement and the Provider hereby agrees to enter into any and all written agreements as may be required by the University for such transfer or assignation.
2. **liability, INDEMNITY AND INSURANCE** 
   1. In respect of any information or materials supplied by the University to the Provider under the Agreement (or any Request or Call-Off Contract hereunder) in respect of and relating to any Services to be provided, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties. Therefore, the Provider shall in all cases be entirely and solely liable for the use to which it puts such information and materials.
   2. Subject to paragraph 10.4, the aggregate liability of the University to the Provider for all and any breaches of this Agreement, any negligence or any other liability arising in any other way out of the subject matter of this Agreement shall not exceed the aggregate amount paid or payable to the Provider for the relevant Call-Off Contract in respect of which the liability arises.
   3. Subject to paragraph 10.4, the aggregate liability of the Provider to the University for any breach of this Agreement, any negligence or any other liability arising in any other way out of the subject matter of this Agreement, shall not exceed the total sum paid to the Provider (at the date the loss was incurred) under this Agreement (including any Call-Off Contracts).
   4. Nothing in this Agreement limits or excludes either party's liability (i) for death or personal injury caused by the negligence of the relevant party; (ii) for any loss or damage caused by a deliberate breach of this Agreement; or (iii) for fraud or fraudulent misrepresentation; (iv) to the extent that such liability cannot be limited or excluded by law; or (v) for any liability that arises pursuant to an indemnity under this Agreement.
   5. The Provider shall and hereby agrees to indemnify the University in full in respect of any losses, liabilities, damages, fines, expenses and costs (including reasonable legal costs) for which the University may become liable arising out of or in connection with:
      1. any claim that anything done in the course of performance of the Services infringes the intellectual property rights of any third party; and
      2. any failure by the Provider to comply with applicable legislation, rules, regulations and codes of practice (including EU procurement and state aid legislation) in the performance of Services.
   6. Without prejudice to the Provider’s liability under this Agreement, the Provider will maintain in force during the Period at the Provider’s expense adequate insurance policies, which shall be in the sum of £5million in respect of any one incident and £5 million in aggregate. The Provider will provide written proof of such insurance policies to the University within five (5) business days of a request to do so.
3. **No Agency or Partnership**
   1. The relationship of the University to the Provider shall be that of an independent contractor who has undertaken to supply specific Services.
   2. The University shall not be empowered to make, or attempt to make, any formal or binding commitments on behalf of the Provider, nor shall the Provider be empowered to make, or attempt to make, any formal or binding commitments on behalf of the University.
   3. The University shall have no responsibility or liability to the Provider in respect of ill health or accidental injury or death arising from the performance or non-performance of the Services unless such ill health or accidental injury or death arises from or is caused by the negligent acts or omissions of the University, its servants or agents.
4. **Notices**
   1. Any notice required to be given under, or any communication between the parties with the respect to any of the provisions of the Agreement shall be in writing in English and shall be deemed duly given if signed by or on behalf of a duly authorised officer of the party giving the notice and if left at, or sent by pre-paid registered or recorded delivery post, or by facsimile transmission or other means of electronic telecommunication in permanent written form to the address of the receiving party as specified in the Agreement (as or amended from time to time by due notice in writing to other party).
   2. Any such notice or other communication shall be deemed to have been given and received by the addressee:-
      1. at the same time as it is left at the address of or handed to a representative of the party to be served;
      2. by post on the day (not being a Sunday or public holiday) 2 days following the date of posting);
      3. in the case of a facsimile or email or other type of electronic telecommunication on the day following despatch.
   3. In providing the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was correctly addressed and was posted, or that the facsimile or e-mail or other form of electronic communication was correctly addressed and was despatched and despatch of the transmission was confirmed and (in the case of a facsimile) confirmed as having been sent to the number above with all pages successfully transmitted.
5. **REMEDIEs**
   1. If any Services are not supplied in accordance with, or the Provider fails to comply with, any terms of this Agreement or the Provider uses any fees paid to it in connection with this Agreement or any Call-Off Contract in a manner inconsistent with this Agreement (each a “**Failure**”), the University shall notify the Provider of the Failure and (without prejudice to any other right or remedy) the University may:

* + 1. require the Provider to remedy the Failure within such period of time as the University may require (acting reasonably);

* + 1. claim such damages from the Provider as the University may have sustained in connection with the Failure; and/or

* + 1. if such Failure relates to the quality of work carried out, the Provider shall, without additional charge to the University, carry out such additional work within such timescales as the University may reasonably require to ensure the Services are performed to the University’s reasonable satisfaction.
  1. In the event the Provider fails to remedy each Failure in accordance with Clause 13.1 above, the University may exercise any one or more of the following rights or remedies:

* + 1. rescind this Agreement;

* + 1. suspend payment to the Provider under the applicable Call-Off Contract in respect of which the Failure has arisen until the Failure is remedied; and/or
    2. reclaim part or all of the fees already paid to the Provider under the Call-Off Contract in respect of which the Failure has arisen in which case the Provider shall promptly repay to the University such proportion of the fees paid to it under this Agreement as requested by the University. Where directed to do so by the University, the Provider shall repay such proportion of the fees as requested directly to JHI.

1. **TERM and Termination**
   1. This Agreement shall be deemed to have commenced on the Commencement Date and shall continue in force for the Period, unless earlier terminated in accordance with this clause 14.
   2. Either party shall have the right to terminate this Agreement and/or a Call-Off Contract (in respect of a Call-Off Contract, in whole or in part) forthwith by notice in writing to the other party in the event of:
      1. any material breach by the other party of any of its duties or obligations under this Agreement or the relevant Call-Off Contract (as the case may be) and, in the case of a breach capable of remedy, the breach is not remedied within thirty (30) days following receipt of written notice specifying the breach and requiring it to remedy the breach. For the purpose of this Clause 14.2.1, a breach shall be considered capable of remedy if the defaulting party can comply with the relevant obligation(s) in all respects other than as to the time of performance; or
      2. any persistent breach by the other party of any of its duties or obligations under this Agreement or the relevant Call-Off Contract (as the case may be). For the purpose of this Clause 14.2.2, a breach shall be persistent where the defaulting party has already been notified to remedy the breach but it has recurred not less than three (3) further times in any continuous period of twelve (12) months; or
      3. in accordance with Clause 16 (Force Majeure).
   3. The University may terminate this Agreement and/or a Call-Off Contract (in respect of a Call-Off Contract, in whole or in part) immediately:
      1. upon giving eighty (80) days’ notice to the Provider; or
      2. if the Provider has a receiver, administrative receiver or similar officer appointed in respect of the whole or any substantial part of its assets, or an order is made or a resolution is passed for its winding up or a petition is presented for the appointment of an administrator or similar officer to it, or it enters into any form of insolvency proceedings, or is unable to pay its debts or certifies that it is unable to pay its debts, or it makes or enters into any arrangement or compromise with any of its creditors, or if an analogous event to any of the foregoing occurs in any part of the world.
   4. The University may terminate this Agreement and/or a Call-Off Contract (in respect of a Call-Off Contract, in whole or in part) immediately by notice in writing and without liability should the Prime Contract, or the University’s support under the Prime Contract, be terminated for any reason.
   5. At the request of JHI, the University may terminate this Agreement and/or a Call-Off Contract (in respect of a Call-Off Contract, in whole or in part) immediately by notice in writing to the Provider and without liability should the Scottish Ministers:
      1. withdraw part or all of the CREW Funding; or
      2. reclaim part or all of the CREW Funding.

* 1. In the event of termination under Clause 14.5.2, the Provider shall repay any or all fees paid to it by the University under this Agreement and/or any Call-Off Contract as directed by the University direct to JHI within seven (7) days following receipt of such written termination notice from the University.
  2. If the Provider fails to repay any sum which may become due in accordance with Clause 14.6, then without prejudice to the University’s other rights and remedies, interest shall accrue on such overdue amounts at an annual rate equal to 2% per annum over the then current Bank of England base lending rate prevailing at the date of the University’s written notice requesting payment, commencing on the due date and continuing until fully paid.
  3. Upon termination or expiry of this Agreement:
     1. the Provider will immediately cease using the CREW Logo (except to the extent such use is required for the purposes of any ongoing Call-Off Contracts (if applicable)); and
     2. on request, the Provider will provide such reasonable assistance to the University as may be required to facilitate the smooth migration of the services provided by the University under the Prime Contract to JHI or a replacement supplier appointed by JHI (as the case may be).
  4. Upon termination or expiry of this Agreement, subject as provided in this clause 14, neither party shall be under any further obligation to the other under this Agreement, save in respect of any Call-Off Contract which (unless expressly terminated itself) shall continue in full force and effect until termination or expiry in accordance with its terms.
  5. Termination of an individual Call-Off Contract (either in whole or in part) shall not affect any other Call-Off Contract or this Agreement.
  6. Termination or expiry of this Agreement shall not affect the acquired rights and obligations of either party under this Agreement as at the date of such termination or expiry.
  7. The terms of Clauses 1) (Definitions), 2.10(Third party rights), 3) (Payments) (in relation to payments due up to and including the date of termination), 4) (Audit), 5 (Confidentiality), 6 (Reporting), 7 (Intellectual Property), 8 (Publication), 10 (Liability), 12 (Notices), 13.1.2 and 13.2.3 (Remedies), 14.6 to 14.13 (inclusive) (Termination), 15 (Data Protection), 18 (General) and 19 (Governing Law), will continue in full force and effect regardless of the expiry or termination of this Agreement.
  8. Upon termination or expiry of any Call-Off Contract, the provisions set out in Box 11 of such Call-Off Contract relating to ownership of Foreground IP shall continue in full force and effect regardless of the expiry or termination of such Call-Off Contract.

1. **DATA PROTECTION** 
   1. The parties agree that in respect of:
      1. University Personal Data, the University shall be the Controller and the Provider shall be the Processor; and
      2. Provider Personal Data, Provider shall be the Controller and the University shall be the Processor.
   2. Each party shall comply with DP Laws and its relevant obligations as Processor and Controller under this Agreement. The Processor shall procure that any Sub-Processor that has access to Protected Data shall comply with the Processor’s obligations under this Agreement.
   3. The processing to be carried out by the Processor under this Agreement is for the purpose of enabling the Provider to carry out the Project for the Term. The Personal Data includes: (i) the University’s employee names and email addresses; (ii) the Provider’s employees names, email addresses and copies of their CV’s; and (iii) any other Personal Data which may be included on project reports provided by the Provider to the University.
   4. Where the Processor processes Protected Data on behalf of Controller, the Processor shall (and shall procure that any person acting under its authority who has access to Protected Data): 
      1. process the Protected Data only on and in accordance with Controller’s documented instructions as set out in this clause 15 (“**Processing Instructions**”); and
      2. immediately inform Controller of any legal requirement under applicable law that would require the Processor to process the Protected Data otherwise than only on the Processing Instructions, or if any Controller instruction infringes DP Laws.
   5. The Processor shall implement and maintain, at its cost and expense, appropriate technical and organisational measures in relation to the processing of Protected Data by the Processor:
      1. such that the processing will meet the requirements of DP Laws and ensure the protection of the rights of Data Subjects; and
      2. so as to ensure a level of security in respect of Protected Data processed by it is appropriate to the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Protected Data transmitted, stored or otherwise processed.
   6. Without prejudice to clause 15.5.2, the Processor shall, in respect of all Protected Data processed by it under this Agreement comply with the requirements regarding security of processing set out in DP Laws, all relevant Controller policies and in this Agreement.
   7. The Processor shall not engage another Processor to perform specific processing activities in respect of the Protected Data without Controller’s prior written consent and, if the Controller gives its consent, the Processor shall appoint the Sub-Processor under a binding written contract (“**Processor Contract**”) which imposes the same data protection obligations as are contained in this Agreement on the Sub-Processor, in particular under clause 15.5 and the conditions in this clause 15.7 for engaging another Processor.
   8. The Processor shall ensure that Processor personnel processing Protected Data are under an obligation to keep Protected Data confidential, and take all reasonable steps to ensure that the Processor personnel processing Protected Data receive adequate training on compliance with this clause 15 and the DP Laws applicable to the processing.
   9. The Processor shall implement and maintain, at its cost and expense, appropriate technical and organisational measures to assist the Controller in the fulfilment of Controller’ obligations to respond to Data Subject Requests relating to Protected Data, including to ensure that all Data Subject Requests it receives are recorded and then referred to the Controller within three (3) days of receipt of the request.
   10. The Processor shall, at its cost and expense, provide reasonable assistance, information and cooperation to the Controller to ensure compliance with Controller’ obligations under DP Laws including with respect to: (i) security of processing; (ii) notification by Controller of Personal Data Breaches to the Supervisory Authority or Data Subjects; (iii) DPIAs and prior consultation with a Supervisory Authority regarding high risk processing; and (iv) Data Subject Requests.
   11. The Processor shall not transfer any Protected Data to any country outside the European Economic Area (“**EEA**”) or to any international organisation (an **“International Recipient”**) without the Controller’s prior written consent. If Controller consents to the transfer of Protected Data to an International Recipient, the Processor shall ensure that such transfer (and any onward transfer): (i) is pursuant to a written contract including provisions relating to security and confidentiality of the Protected Data; (ii) is effected by way of a legally enforceable mechanism for transfers of Personal Data as may be permitted under DP Laws from time to time (the form and content of which shall be subject to Controller’ written approval); (iii) complies with clause 15.4.1; and (iv) otherwise complies with DP Laws.
   12. The Processor shall allow for and contribute to audits, including inspections, conducted by Controller or another auditor mandated by the Controller for the purpose of demonstrating the Processor’s compliance with its obligations under DP Laws and this clause 15, subject to the Controller giving the Processor reasonable prior notice of such audit and/or inspection, and ensuring that any auditor is subject to binding obligations of confidentiality and that such audit or inspection is undertaken so as to cause minimal disruption to the Processor’s business.
   13. In respect of any Personal Data Breach (actual or suspected) related to the services or this Agreement, the Processor shall notify Controller of the Personal Data Breach without undue delay (but in no event later than twelve (12) hours after becoming aware of the Personal Data Breach) and provide the Controller without undue delay (wherever possible, within twenty four (24) hours of becoming aware of the Personal Data Breach) with such details and support relating to the Personal Data Breach as the Controller reasonably requires.
   14. The Processor shall without delay, at the Controllers written request, either securely delete or return all Protected Data to the Controller in hardcopy or electronic form after the end of the provision of the Services related to processing or, if earlier, as soon as processing by the Processor of any Protected Data is no longer required for the Processor’s performance of its obligations under this Agreement, and securely delete existing copies (unless storage of any data is required by applicable law, and if so the Processor shall notify the Controller of this).
2. **force majeure**

* 1. Any delays in or failure of performance by either party under this Agreement or any Call-Off Contract will not be considered a breach of this Agreement or the applicable Call-Off Contract (as the case may be) if and to the extent that such delay or failure is caused by occurrences beyond the reasonable control of the defaulting party including: acts of God; acts and regulations of any government; strikes or other concerted acts of workers; fire; floods; explosions; riots; wars; and sabotage; and any time for performance under this Agreement or the applicable Call-Off Contract (as the case may be) shall be extended by the actual time of delay caused by any such occurrence.

* 1. If the Provider is prevented from performing its obligations under this Agreement or any Call-Off Contract pursuant to Clause 16.1 for a continuous period of two (2) months, the University may terminate this Agreement on giving the Provider one months’ written notice provided that the Provider remains so prevented on expiry of the notice period.

1. **Dispute resolution**
   1. The parties shall in good faith attempt to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement.
   2. If any such dispute cannot be resolved in accordance with Clause 17.1 the dispute may, by agreement between the parties, be referred to the Head of Research Business Development and Contracts in the case of the University and to [insert details] in the case of the Provider in an attempt to resolve the issue. A party may bring proceedings in accordance with Clause 19 if the dispute cannot be resolved, and a party may apply to the court for an interdict whether or not any issue has been escalated under this Clause 17.
2. **GENERAL**
   1. This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. The Provider acknowledges that in entering into this Agreement it does not rely on, and shall have no rights or remedies in respect of, any representation or warranty whatsoever (including whether made innocently or negligently or whether express or implied by law) and to the extent that it does have such right or remedy it hereby waives such right or remedy to the fullest extent permitted by law. Nothing in this Agreement excludes or limits for fraud or fraudulent misrepresentation.
   2. The Provider shall comply with all applicable laws, statutes and regulations relating to anti-bribery and corruption including the UK Bribery Act 2010 (as may be amended from time to time), shall maintain appropriate policies and procedures to ensure compliance of such requirements and shall immediately notify the University of any demand for any undue financial or other advantage of any kind received by it in connection with this Agreement.

* 1. If and in so far as any part or provision of this Agreement is or becomes void or unenforceable it shall be deemed not to be or never to have been or formed a part of this Agreement and the remaining provisions of this Agreement shall continue in full force and effect.
  2. Any variation to the Agreement shall only be effective if in writing and signed by both parties.
  3. The failure on the part of either party to exercise or enforce any right conferred upon it under this Agreement shall not be deemed to be a waiver of any such right or operate to bar the exercise or enforcement thereof at any time or times thereafter.

1. **GOVERNING LAW**
   1. This Agreement and all disputes or claims arising out of or in connection with it or its subject matter (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Scotland.
   2. The parties hereby irrevocably agree that the Scottish courts shall have exclusive jurisdiction to settle all disputes or claims that arise out of or in connection with the Agreement or its subject matter (including non-contractual disputes or claims).

**IN WITNESS WHEREOF** these presents consisting of this and the preceding [fourteen (14)] pages together with the Schedule are executed by the parties hereto as follows:

For and on behalf of **THE UNIVERSITY COURT OF THE UNIVERSITY OF ST. ANDREWS**

at

on the day of 201[ ]

By:

------------------------------------- witness signature ----------------------

**AUTHORISED SIGNATORY**

witness full name ----------------------

witness address ------------------------

For and on behalf of **[INSERT NAME]**

at

on the day of 201[ ]

By:

-------------------------------------

**DIRECTOR/AUTHORISED SIGNATORY** witness signature ----------------------

witness full name ----------------------

witness address ------------------------

**This is the Schedule referred to in the foregoing Agreement between the University Court of the University of St Andrews and [insert name] dated [*insert date*……………………….]**

**SCHEDULE**

**PART** **1**

**CALL-OFF CONTRACT**

This Call-Off Contract, between the University Court of the University of St Andrews and [insert name] (“the Provider”), is entered into under the terms of the Call Down Framework Agreement entered into by St Andrews and the Provider on [date] (“the Agreement”) for the provision of Services as detailed below. The terms and conditions of the Agreement including the Schedule thereto are hereby incorporated into this Call-Off Contract subject to any variations to such terms and conditions as set out below. All defined terms contained herein shall have the meaning ascribed to them in the Agreement unless they are otherwise defined herein.

|  |  |
| --- | --- |
| 1. **Services** | *[Insert a clear description of the services to be provided/ CREW research activity required]* |
| 1. **Deliverables** | *[Insert a clear description of the deliverables which the Provider is required to provide as part of the Services.]* |
| 1. **JHI PI** | *[Insert name/contact details of JHI PI]* |
| 1. **Provider PI** | *[Insert name/contact details of Provider PI]* |
| 1. **Key Personnel** | *[Insert names of key members of the Provider’s project team as agreed with the Provider. Please note, removal of any individual named on this list will entitle the University to terminate the Call-Off Contract.]* |
| 1. **Number of Days/Hours** | *[Insert details]* |
| 1. **Due Date(s) for Deliverables** | *[insert clear dates by which each of the Deliverables must be delivered to JHI/the University]* |
| 1. **Maximum Payment for Services** | *[Insert details]* |
| 1. **Payment Terms (if different to those set out in clause 3) of the Agreement)** | *[Insert details of payment terms if different from clause 3) (e.g. if payment will be made upfront or in instalments). Otherwise, please mark this section “N/A”.]* |
| 1. **Background** | *[Insert relevant background information]* |
| 1. **Intellectual Property Rights** | **[Drafting note: please delete either option** **1 or** **2 below as appropriate]**  **[Option 1: Foreground IP to be owned by the Provider]**  All Foreground IP shall be owned by and vest in the Provider.  The Provider shall ensure that all Foreground IP generated by students, employees, sub-contractors and other agents, will be owned by or are validly assigned upon creation to, the Provider. The Provider warrants that any Foreground IP generated by students, employees, sub-contractors and other agents of the Provider shall vest upon creation in the Provider.    The Provider hereby grants, on completion of the Services under this Call-Off Contract in favour of the University an irrevocable, non-exclusive, sub-licensable, transferable licence (which shall include the rights to grant sub-licences to JHI who may grant sub-licences to third parties) to:   1. use any and all Foreground IP as may be required to permit JHI to comply with the CREW Funding Terms; 2. use the Foreground IP and other results which may be generated during the course of the Services for non-commercially funded and/or academic research purposes; and 3. publish and/or make public disclosures relating to the CREW Report and other Foreground IP and results which may be generated during the course of the Services.   The Provider shall, and shall procure that any necessary third parties (including their respective employees and agents) shall, execute and perform all such further deeds, documents, assurances acts and things as the University may reasonably require to give full force and effect to the provisions in this Box 11 of the Call-Off Contract.  The Provider shall ensure that it uses all reasonable endeavours to exploit the Foreground IP.  The Provider acknowledges that certain provisions in this Box 11 of this Call-Off Contract are intended to operate for the benefit of, and be directly enforceable by, JHI. The Provider hereby agrees to execute all such documents and do all things deemed reasonably necessary by the University to allow JHI to benefit from the licence rights granted to it pursuant to this Call-Off Contract.  **[Option 2: All arising IPR to be assigned]**  The Provider acknowledges that the University is required to assign ownership of any Foreground IP to JHI. For this reason, all Foreground IP shall be owned by and vest in the University and, to the extent that it is legally able, the Provider hereby transfers, assigns and/or vests in the University and, insofar as it is not competent for the Provider to currently transfer, assign and/or vest, hereby undertakes and agrees to transfer, assign and/or vest in the University from the date of creation its whole right, title and interest in and to all copyright and all other Foreground IP.  The Provider shall ensure that all Foreground IP generated by students, employees, sub-contractors and other agents, will be owned by or are validly assigned upon creation to, the Provider. The Provider warrants that any Foreground IP generated by students, employees, sub-contractors and other agents of the Provider shall vest upon creation in the Provider.  The Provider shall, and shall procure that any necessary third parties (including their respective employees and agents) shall execute and perform all such further deeds, documents, assurances acts and things as the University may reasonably require to give full force and effect to the provisions of this Box 11 of this Call-Off Contract.  To the extent any Foreground IP is transferred or assigned to or vests in the University in accordance with this Call-Off Contract, the University hereby grants to the Provider an irrevocable, non-exclusive, non-transferable, royalty free licence to use the Foreground IP for:  a) the purposes of performing the Services; and  b) non-commercially funded academic research purposes.  The Provider acknowledges that this Box 11 of this Call-Off Contract is intended to operate for the benefit of, and be directly enforceable by, JHI. The Provider hereby agrees to execute all such documents and do all things deemed reasonably necessary by the University to allow JHI to benefit from the rights granted to it pursuant to this Call-Off Contract. |
| 1. **Additional Information/ Provisions** | *[Insert details of any relevant additional information/ obligations on the Provider (e.g. additional reporting obligations).]* |

By signing and returning this Call-Off Contract, the Provider agrees to provide the Services in accordance with the terms of the Agreement. In the event that the Provider begins to perform the Services, prior to signing this Call-Off Contract, the Provider will be deemed to have accepted the terms of this Call-Off Contract and the terms of the Agreement and this Call-Off Contract will apply.

For and on behalf of **THE UNIVERSITY COURT OF THE UNIVERSITY OF ST. ANDREWS**

at

on the day of 201[ ]

By:

------------------------------------- witness signature ----------------------

**AUTHORISED SIGNATORY**

witness full name ----------------------

witness address ------------------------

For and on behalf of **[INSERT NAME]**

at

on the day of 201[ ]

By:

-------------------------------------

**DIRECTOR/AUTHORISED SIGNATORY** witness signature ----------------------

witness full name ----------------------

witness address ------------------------

**PART** **2**

**LETTER TO JHI**

**[To be printed on Provider headed paper]**

|  |  |
| --- | --- |
| Derek Leslie  The James Hutton Institute  Invergowrie  Dundee  DD2 5DA | [Insert date] |
|  |

Dear Sirs

Centre of Expertise for Waters (“CREW”)

Creation of a third party right in favour of The James Hutton Institute

We refer to the CREW framework agreement entered into between The University Court of the University of St Andrews (“USTAN”) and [insert name of Provider] (“we” or “the Provider”) dated [insert date] (“Framework Agreement”).

We acknowledge that certain provisions of the Framework Agreement and each Call-Off Contract entered into between USTAN and the Provider pursuant to the Framework Agreement are intended to operate for the benefit of, and be directly enforceable by, The James Hutton Institute, a company limited by guarantee (Registered Company Number SC374831) and also a registered charity (registration number SC041796) having its registered office at Invergowrie, Dundee, DD2 5DA (“you” or “the Institute”).

Accordingly, we hereby acknowledge and you hereby accept that the following provisions of the Framework Agreement shall be for the benefit of, and be directly enforceable by, the Institute:

* Clauses 3.5 and 3.6 of the Framework Agreement;
* Clause 7 of the Framework Agreement;
* Clause 13.2.3 of the Framework Agreement; and
* Clause 14.6 and 14.7 of the Framework Agreement.

Furthermore, we hereby acknowledge and you hereby accept that Box 11 (*Intellectual Property Rights*) of each Call-Off Contract entered into between USTAN and the Provider pursuant to the Framework Agreement shall be for the benefit of, and be directly enforceable by, the Institute.

This letter is governed by Scots Law and the parties to this letter irrevocably submit to the exclusive jurisdiction of the Scottish courts to settle any disputes which may arise out of or in connection with this letter.

Please acknowledge receipt and acceptance of this letter by signing and returning the duplicate copy to [insert Provider address].

Yours faithfully

……………………………

For and on behalf of [insert Provider name]

We, The James Hutton Institute, hereby acknowledge receipt and acceptance of this letter.

Signed …………………………….

Date………………………………..

For and on behalf of The James Hutton Institute

**PART** **3**

**CREW LOGO AND BRAND GUIDELINES**

**See CREW Logo guidelines document**