1. 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(“USTAN”).

- and -

**[ name ],** a [designation and address](“Contractor”)

1. WHEREAS:
	1. The James Hutton Institute (“JHI”) was awarded grant funding by the Scottish Ministers in relation to the Centre of Expertise for Waters (“CREW”).
	2. JHI and USTAN subsequently entered into an agreement under which USTAN has responsibility for dispersing some of the said grant funding directly to the HEI establishments in relation to CREW related research activities.
	3. Consequently, USTAN wishes to have carried out the Project identified in Appendix A, the Contractor has submitted to USTAN an application for carrying out of the Project and USTAN is willing to provide the funding to the Contractor for the Project.
2. NOW IT IS HEREBY AGREED:
	1. The Contractor and USTAN agree to observe and comply with USTAN’s standard terms and conditions set out in Appendix F (the "Terms and Conditions") which are incorporated into this Agreement.
	2. The Contractor will carry out the Project in accordance with this Agreement.
	3. USTAN will pay to the Contractor its costs properly incurred in carrying out the Project in accordance with this Agreement.
	4. This Agreement supersedes and replaces any and all previous contracts, agreements and statements relating to the Project, and comprises:

This document – Form of Agreement;

Appendices:

A – Specification and Research Proposal together with any specified amendments

B – Pricing Schedule

C – Reports Schedule

D – Contacts Schedule

E – Intellectual Property Schedule

F - The Terms and Conditions

G- Letter to JHI

H – CREW logo and Brand Guidelines

* 1. The Contractor shall commence work on the Project on **[date]** (the “Commencement Date”).
	2. The Contractor shall finish work on the Project by **[date]**).
	3. The documents shall take precedence in the order in which they appear in clause 4 of this Form of Agreement.
	4. The definitions herein apply equally within each Appendix hereto.

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 **[name]**

at

on the day of 201[ ]

By:

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

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

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

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

THIS IS THE APPENDIX A REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN USTAN AND THE CONTRACTOR

1. APPENDIX A - Specification and Research Proposal
	1. The title of the Project is: **[title]**
	2. The Project Code is: **CRW201[ ]**
	3. The objectives and research required of the Project are as specified in the project specification proposal for **CRW201[ ]:**

|  |  |
| --- | --- |
|  |  |
|  | **[…]** |

* 1. The approaches for the Project are as specified in the research proposal **CRW201[ ]**, submitted.

|  |  |
| --- | --- |
| * 1. 4
 | **Methods.** Summarise your approach to the project detailing how you will undertake each of the tasks listed in the project specification.  |
|  |  |

* 1. The primary milestones for the Project are as specified in the research proposal **CRW201[ ]**.

|  |  |
| --- | --- |
| * 1. 5
 | **Milestones**. Please describe the milestones (i.e. points at which progress can be assessed) with targets for monitoring progress of the research towards the scientific objectives. |
|  | **Milestone** | **Target date** | **Title** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

THIS IS THE APPENDIX B REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN USTAN AND THE CONTRACTOR

1. APPENDIX B - Pricing Schedule
	1. USTAN will pay to the Contractor in respect of the Project no more than:

**£ [amount]** inclusive of VAT.

* 1. In respect of each payment to be made to the Contractor under this Agreement:
		1. USTAN will pay 100%

 **[Drafting note: please select an appropriate payment option from the options below]**

**[OPTION 1]**

**[**USTAN shall pay the amount detailed in paragraph 1 above to the Contractor within 35 Business Days following receipt by USTAN of i) confirmation from JHI that it has approved the CREW Report (as defined in Appendix C) and ii) a valid invoice from the Contractor.**]**

**[OPTION 2]**

* 1. **[**Maximum payment in any one project year will be as follows:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Funding Body** | **1st anniversary of Commencement Date** | **2nd anniversary of Commencement Date** | **3rd anniversary of Commencement Date**  | **4th anniversary of Commencement Date** | **Total** |
| USTAN |  £[ ] |  |  |  |   |
| **Total Project Costs** |  **£[ ]** |  |  |  |  |

* 1. The Contractor shall provide USTAN with appropriate invoices in such form as USTAN may reasonably require prior to each payment date as set out in the payment schedule above. USTAN shall make payment to the Contractor within 35 Business Days following receipt by USTAN of a valid invoice.
	2. The final payment specified in the payment schedule above will be retained by USTAN until such time as USTAN receives written confirmation from JHI that it has approved the CREW Report (as defined in Appendix C). USTAN will make the final payment to the Contractor within 35 Business Days following receipt by USTAN of such confirmation.**]**

**[OPTION 3]**

* 1. **[**Within 35 Business Days following achievement of each of the following milestone events by the Contractor, USTAN shall pay to the Contractor the amount(s) set out next to such milestone event subject to receipt of a valid invoice from the Contractor:

|  |  |  |
| --- | --- | --- |
| Development Milestone Event | Due Date | Amount to be paid |
|  | [insert] | [insert] |
|  | [insert] | [insert] |
|  | [insert] | [insert] |

* 1. If, for any reason, any of the milestones set out above are achieved without all or any of the preceding milestones having been achieved by the Contractor, then upon achievement of the relevant milestone, the milestone payments for the preceding milestones which have not been achieved shall also be due and payable.**]**

**[Drafting note: whether milestones are appropriate should be considered in each case. Specific payment milestones may be included or the milestones in Appendix A could be cross referred to here. In each case, care should be taken to ensure the milestones are capable of objective assessment (e.g. “x samples analysed”). To ensure full payment is not made until JHI has signed off on the project outputs, the final milestone event should always be receipt by USTAN of confirmation that JHI has approved the CREW Report.]**

* 1. USTAN is liable to the Contractor only for their respective proportion of each payment, as identified in paragraph 1 above.
	2. Where the Contractor is VAT registered, it shall provide to USTAN a VAT invoice in respect of the amounts of each of their respective payments.
	3. The Contractor shall use the fees received by it under this Agreement solely for the purpose of performing the Project in accordance with this Agreement. The Contractor will maintain adequate internal expenditure controls to ensure that any and all fees received by it under this Agreement are used at all times in accordance with the terms of this Agreement.
	4. The Contractor shall maintain complete and accurate records relating to its receipt, use and expenditure of any and all fees paid to it under this Agreement for six (6) years after the date on which the relevant expenditure occurs. The Contractor shall, on request, during the term of this Agreement and for five (5) years thereafter grant JHI (and such other persons as USTAN 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.
	5. USTAN shall have no liability for payment to the extent that the CREW Funding (as defined in Appendix F) is suspended, delayed, withdrawn or reclaimed by the Scottish Ministers and USTAN will notify the Contractor as soon as reasonably practicable once it has become aware of such suspension, delay, withdrawal or reclaim by the Scottish Ministers.
	6. In the event USTAN becomes bound to repay the fees received by the Contractor under this Agreement to JHI as a result of a decision by the Scottish Ministers to reclaim the CREW Funding (in whole or in part), the Contractor shall pay JHI such sum as USTAN may specify within seven (7) days following receipt of written notice from USTAN requesting payment.
	7. If the Contractor fails to pay any sum which may become due in accordance with paragraph 13 above, then without prejudice to the USTAN’s other rights and remedies, interest shall accrue on such overdue amounts at an annual rate equal to 2% over the then current Bank of England base lending rate prevailing at the date of USTAN’s written notice requesting payment, commencing on the due date and continuing until fully paid.

THIS IS THE APPENDIX C REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN USTAN AND THE CONTRACTOR

1. APPENDIX C – Reporting Schedule

**Interim Reports**

* 1. The Contractor shall promptly submit such interim reports regarding progress of the Project in such format and at such times as USTAN may reasonably require to USTAN and the CREW project lead at the following addresses: ecd2@st-andrews.ac.uk and [insert relevant CREW email address].

**Final Report**

* 1. The Contractor shall submit a final report (the “CREW Report”) within **thirty (30) days** following the date specified in paragraph 6 of the Form of Agreement or such other date as may be notified by USTAN to the Contractor from time to time. Unless specified otherwise in the project specification and/or mutually agreed by the Contractor and USTAN, the Contractor shall provide one copy by e-mail (using: a James Hutton email address provided and also to ecd2@st-andrews.ac.uk), in the format specified by USTAN. Unless agreed otherwise, this report shall consist of an identification sheet, executive summary and scientific record. In addition annexes of detailed information may be added. Unless agreed otherwise, the final report shall contain:
		1. a sheet identifying the Project’s code and title, as set out in Appendix A; the representatives of the Parties, as set out in Appendix D; the Contractor’s Representative’s address; the Project’s Commencement Date and the date specified in paragraph 6 of the Form of Agreement; the final year and total Project costs (if known); whether any Intellectual Property Rights have arisen from the Project (which may be verified by an independent Intellectual Property Rights advisor);
		2. an executive summary no longer than four (4) pages written in English in a style understandable to the intelligent non-scientist with the following headings:
			1. Research questions;
			2. Key findings (to be displayed in a bullet point list);
			3. Background; and
			4. Research undertaken.
		3. a scientific report in such form as USTAN may reasonably require, stating:
			1. the scientific objectives and primary milestones for the Project as set out in paragraphs 3 and 6 of Appendix A;
			2. the methods used and results of the research;
			3. discussion of the results and their reliability;
			4. the extent to which the objectives set out in paragraph 3 of Appendix A have been met;
			5. details of possible future research and how this may relate to other work in the field, identifying further avenues as appropriate.
		4. a list of final or draft publications arising out of the Project together with copies of any other relevant papers.
	2. USTAN reserves the right to return to the Contractor any interim or final report submitted by the Contractor which is not, in the reasonable opinion of USTAN 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 Contractor, the Contractor shall remedy any deficiencies identified by USTAN and submit a revised report at no additional cost to USTAN within twenty five (25) days following the date on which USTAN returned the report to the Contractor or such other timescales as USTAN may specify (acting reasonably).
	3. For clarity, notwithstanding submission by the Contractor of the CREW Report in accordance with paragraph 2 of this Appendix C, the Project shall not be deemed to have completed until such time as the Contractor has received written confirmation from USTAN that the CREW Report has been approved by the JHI.

**Additional Reporting Requirements**

* 1. The Contractor shall:
		1. promptly notify USTAN if it becomes aware of any irregular or fraudulent activity relating to or that may impact on the Project or use of the funding due to the Contractor under this Agreement and provide such information and assistance as USTAN may reasonably require in order to investigate such irregular or fraudulent activity; and
		2. promptly provide any additional information which USTAN reasonably requests in relation to this Agreement.
	2. The obligations contained in this Appendix C shall survive expiry or termination howsoever arising of this Agreement for a period of five (5) years.

THIS IS THE APPENDIX D REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN USTAN AND THE CONTRACTOR

1. APPENDIX D – Contacts Schedule
	1. USTAN’s Representative will be: **Dr Mark James**
	2. USTAN’s address for correspondence and submission of invoices will be:

CREW - C/O MASTS
Scottish Oceans Institute
University of St Andrews
East Sands
Fife
KY16 8LB

* 1. The Contractor’s Representative will be: **[ ]**
	2. The Contractor’s address for correspondence and service will be:

[ ]

* 1. Where the Contractor consists of more than one person there shall be only one individual acting as the Contractor’s Representative.
	2. The Contractor’s Key Personnel will be: **[ ]**
	3. JHI’s Representative will be: **[ ]**
	4. JHI’s address for correspondence will be: **[ ]**
	5. CREW’s address for correspondence will be: **[ ]**

THIS IS THE APPENDIX E REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN USTAN AND THE CONTRACTOR

1. APPENDIX E – Intellectual Property Schedule

**Ownership and Protection**

**[Option 1: The Contractor owns all Foreground Intellectual Property]**

* 1. **[**Any and all Results shall be owned and vest in the Contractor.**]**

**OR**

* 1. **[**Any and all Results shall be owned by each of the Contractors in equal pro indiviso shares. Each Contractor hereby assigns the Results to itself and to each of the other Contractors to hold in equal pro indiviso shares. Each Contractor hereby grants to each of the other Contractors an irrevocable, non-exclusive licence to use the Results for:
		1. the purpose of conducting the Project; and
		2. academic research and teaching purposes.**]**

**[Drafting note: if there is more than one Contractor, please use the second option of this clause to ensure joint ownership of the Results.]**

* 1. The Contractor shall ensure that all Results generated by students, employees, sub-contractors and other agents, will be owned by or are validly assigned upon creation to, the Contractor. The Contractor warrants that any Results generated by students, employees, sub-contractors and other agents of the Contractor shall vest upon creation in the Contractor.
	2. The Contractor shall ensure:
		1. it promptly and fully discloses to USTAN all Results; and
		2. it will use all reasonable endeavours to exploit the Results.
	3. The Contractor hereby grants, on completion of the Project in favour of USTAN an irrevocable, non-exclusive, sub-licensable, transferable licence (which shall include the right to grant sub licences to JHI who may grant sub licences to third parties) to:
		1. use any and all Results as may be required to permit JHI to comply with the CREW Funding Terms;
		2. use any and all Results which may be generated during the course of the Project for non-commercially funded and/or academic research purposes; and
		3. publish and/or make public disclosures relating to the report and other Results which may be generated during the course of the Project.
	4. USTAN hereby grants to the Contractor a limited, non-exclusive, non-transferrable, non-sub-licensable licence to use the CREW logo (a copy of which is appended to Part 1 of Appendix H) (“**CREW Logo**”) as may be required for the purpose of performing the Project provided that the Contractor:
		1. submits all materials bearing the CREW Logo to USTAN for prior review;
		2. obtains USTAN’s prior written approval to such use of the CREW Logo, which may be withheld at USTAN’s sole discretion; and
		3. uses the CREW Logo solely in accordance with the branding guidelines (a copy of which is appended to Part 2 of Appendix H).

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

* 1. The Contractor acknowledges that certain provisions of this Appendix E are intended to operate for the benefit of, and be directly enforceable by, JHI. The Contractor hereby agrees to execute and return to JHI’s Representative the letter attached as Appendix G promptly following execution by both Parties of this Agreement and execute all such documents and do all things deemed reasonably necessary by USTAN to allow JHI to benefit from the licence rights granted to it pursuant to this Appendix E.
	2. For the avoidance of doubt, the provisions of this schedule do not apply to and do not affect any Intellectual Property Rights in existence before the commencement of the Project.

**[Option 2: All title and rights to be assigned to USTAN]**

* 1. Subject to any prior rights and the rights of third parties, including H M Comptroller General with regard to Crown Copyright, the Contractor hereby transfers, assigns and/or vests in USTAN and, insofar as it is not competent for the Contractor to currently transfer, assign and/or vest, hereby undertakes and agrees to transfer, assign and/or vest in USTAN from the date of creation its whole right, title and interest in and to all copyright and all other Intellectual Property Rights in relation to the Results, including, but not limited to:
		1. the title in any patent, trade mark, other protection and/or registration in relation to such Intellectual Property;
		2. the right to apply for and/or register any patent pursuant to the Patents Act 1977;
		3. any database rights, for the purposes of the Copyright and Rights in Databases Regulations 1997.
	2. The Contractor shall:
		1. Promptly and fully disclose to USTAN all Results;
		2. ensure that all its staff, students and sub-contractors are and will be engaged in relation to the Agreement and the Project on terms which do not entitle any of them to copyright or any other Intellectual Property Rights or other rights in the Results;
		3. ensure that it can and remains entitled to transfer, assign and/or vest free from any encumbrances any title and/or rights necessary to effect the vesting required by this schedule;
		4. do all things and execute at the Contractor’s expense any documents reasonably required to give effect to such vesting in USTAN;
		5. co-operate with and assist USTAN in obtaining and/or enforcing any and all such Intellectual Property Rights vesting in the Results, subject to the Contractor and USTAN agreeing in advance liability to pay the Contractor’s reasonable expenses and costs arising from and related to the performance of this paragraph;
		6. ensure that confidentiality and non-disclosure agreements are in place with its students, staff and sub-contractors to ensure that the ability to secure or maintain such Intellectual Property Rights are not compromised.
	3. To the extent any Intellectual Property Rights in the Results are transferred or assigned to or vest in USTAN in accordance with this Appendix E, USTAN hereby grants to the Contractor an irrevocable, non-exclusive, non-transferable, royalty free licence to use the Results for:
		1. the purposes of conducting the Project; and
		2. non-commercially funded academic research purposes.
	4. USTAN hereby grants to the Contractor a limited, non-exclusive, non-transferrable, non-sub-licensable licence to use the CREW logo (a copy of which is appended to Part 1 of Appendix H) (“**CREW Logo**”) as may be required for the purpose of performing the Project provided that the Contractor:
		1. submits all materials bearing the CREW Logo to USTAN for prior review;
		2. obtains USTAN’s prior written approval to such use of the CREW Logo , which may be withheld at USTAN’s sole discretion; and
		3. uses the CREW Logo solely in accordance with the branding guidelines (a copy of which is appended to Part 2 of Appendix H).

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

* 1. The Contractor acknowledges that certain provisions of this Appendix E are intended to operate for the benefit of, and be directly enforceable by, JHI. The Contractor hereby agrees to execute and return to JHI’s Representative the letter attached as Appendix G promptly following execution by both Parties of this Agreement and execute all such documents and do all things deemed reasonably necessary by USTAN to allow JHI to benefit from the licence rights granted to it pursuant to this Appendix E.
	2. For the avoidance of doubt, the provisions of this schedule do not apply to and do not affect any Intellectual Property Rights in existence before the commencement of the Project.

THIS IS THE APPENDIX F REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN USTAN AND THE CONTRACTOR

1. APPENDIX F – Terms and Conditions
	1. **Definitions**
		1. In these terms and conditions the following words and expressions shall have the meanings given to them below, unless the context otherwise requires:

|  |  |
| --- | --- |
| “Agreement” | The agreement between USTAN and the Contractor incorporating this Document and the Appendices A to H. |
| “Appendix” | One of the appendices lettered A to H incorporated into the Agreement |
| “Application”  | The “Application for a Research Contract with USTAN” submitted by the Contractor to USTAN in respect of the Project, which forms part of this Agreement and is referred to in Appendix A. |
| “Business Day”  | A day (other than a Saturday or Sunday) on which banks in the city of London are generally open for business |
| “Commencement Date” | The date set out in paragraph 5 of the Form of Agreement. |
| “Contractor” | The person or persons named on the Agreement as the Contractor. Where the Contractor consists of more than one person, the obligations of those persons in respect of the Agreement shall be joint and several. |
| “Contractor Personal Data”  | Means the Personal Data of the Contractor. |
| “Contractor's Representative” | The person named in paragraph 3 of Appendix D, subject to the provisions of Condition 3 of this Appendix F. |
| * + - 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” | Centre of Expertise for Waters |
| “CREW Funding Terms” | The agreement entered into between JHI and Scottish Ministers dated 4 March 2016 which governs use of funding in relation to CREW activities.  |
| “CREW Funding”  | The funding awarded to JHI by Scottish Ministers for use in relation to CREW pursuant to a letter dated 4 March 2016. |
| “Data Subject Request” | Means a request made by a Data Subject to exercise any rights of Data Subjects under DP Laws. |
| “DPIA” | 1. 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.
 |
| “Eligible Costs” | Costs incurred by the Contractor for the purposes of the carrying out of the Project, limited to those costs identified in the ‘Financial Guidelines for Project Cost Estimates’ section of the Application. |
| “Intellectual Property Rights”  | Intellectual property rights including 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.  |
| “JHI” | The James Hutton Institute, a company limited by guarantee (Registered Company Number SC374831) and also a registered charity (registration number SC041796) and having its registered office at Invergowrie, Dundee, DD2 5DA. |
| “Key Personnel”  | Any member of the Contractor’s personnel identified by name or job title as key personnel in Appendix D. |
|  “Know-how”  | 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). |
| “Parties” | USTAN and the Contractor. |
| “Period for the Project” | The period for the carrying out of the Project, being the period between the Date for Commencement and the date specified in paragraph 6 of the Form of Agreement. |
| “Prime Contract” | means the agreement between the University and JHI dated [ ] as amended from time to time under which USTAN receives CREW funding from JHI. A summary of the Prime Contract terms will be provided by USTAN on request.  |
| “Processing Instructions” | Has the meaning given to it in clause 14.4.1 of this Agreement. |
| “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. |
| “Project” | The research project particulars of which, are set out in Appendix A. |
| “Project Year”“Protected Data” | Each period of 12 months during the Period for the Project calculated from the Date for Commencement.Means:* 1. in circumstances where USTAN is the Controller and the Contractor is the Processor, USTAN Personal Data; or
	2. in circumstances where the Contractor is the Controller and USTAN is the Processor, Contractor Personal Data.
 |
| “Results” | means any inventions, designs, information, Know-how, specifications, formulae, data, processes, methods, techniques, and other technology and the Intellectual Property Rights generated, or otherwise collected or collated, arising, identified or first reduced to practice, in the course of the Project by agents, employees, students or sub-contractors of the Contractor. |
| “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 14.7 |
| “Supervisory Authority” | 1. 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.
 |
| “USTAN”  | University Court of the University of St Andrews. |
| “USTAN Personal Data**”** | Means Personal Data received from or on behalf of USTAN. |
| “USTAN’s Representative" | The person named in paragraph 1 of Appendix D, subject to the provisions of Condition 3 of this Appendix F. |

* + 1. Unless the context otherwise requires, references in these Terms and Conditions:
			1. to the Contractor or to USTAN shall, where appropriate, be references to any lawful successor, assignee or transferee;
			2. to the Contractor shall, where appropriate, be references to each individual person constituting the Contractor;
			3. to the Contractor shall, where there is more than one contractor named as a Party to this Agreement, be deemed to mean each such contractor unless the context requires otherwise;
			4. to conditions are references to the conditions of these Terms and Conditions unless provided otherwise;
			5. to "person" or "third party" include any individual, company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency, whether or not having a separate legal personality;
			6. to one gender include all genders, and references to the singular include the plural and vice versa;
			7. to any statute, statutory provision or regulation, are references to that statute, statutory provision or regulation, as from time to time amended, extended or re-enacted; and
			8. 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.
		2. The headings in this document are for convenience only, and shall be ignored in construing these Terms and Conditions.
	1. **Duration**
		1. The Contractor shall commence work on the Project no later than the Commencement Date.
		2. The Contractor shall finish the Project by the date specified in paragraph 6 of the Form of Agreement or such other date as the parties may agree in writing from time to time.
	2. **Nominated officers**
		1. USTAN’s Representative shall be the person named in paragraph 1 of Appendix D – Contacts Schedule, or such other person that USTAN may nominate having given 14 days’ notice to the Contractor.
		2. The Contractor’s Representative shall be the person named in paragraph 3 of Appendix D – Contacts Schedule, or such other person that the Contractor may nominate having given 14 days’ notice to USTAN.
	3. **Contractor’s Status**
		1. In carrying out the Project, the Contractor shall be acting as principal and not as agent or employee of USTAN. Accordingly:
			1. The Contractor shall not (and shall ensure that its agents, sub-contractors and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of USTAN, and
			2. Nothing in the Agreement shall impose any liability on USTAN in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of USTAN to the Contractor that may arise by virtue of either a breach of the Agreement or any negligence on the part of USTAN, their staff or agents.
	4. **Warranties**
		1. The Contractor warrants to USTAN that:
			1. the Contractor will carry out and shall ensure that its employees, agents and sub-contractors also carry out the Project with due diligence and reasonable skill and care, in accordance with best professional, technical and scientific knowledge and practice, and any legislative requirements;
			2. any materials or processes used in connection with the carrying out of the Project shall be in accordance with standards set out in the Agreement;
			3. the Contractor will deploy in the performance of the Project only suitably qualified, trained, experienced and (where appropriate) supervised staff, together with any sub-contractors intimated to and approved by USTAN;
			4. the Contractor has understood the nature and extent of the Project to be carried out.
			5. Except as expressly stated, nothing in this Agreement shall be taken as limiting or excluding USTAN’s or the Contractor’s obligations pursuant to any statute, statutory instrument or the common law.
		2. The Contractor warrants and undertakes in favour of (i) USTAN under this Agreement and (ii) in favour of JHI in accordance with the letter contained in Appendix G that nothing done in the course of the performance of the Project will infringe Intellectual Property Rights of any third party. The Contractor also undertakes to obtain appropriate permission for any copyright material used in the Project, where the copyright rests with a person or organisation other than the Contractor. The Contractor shall provide appropriate details, including proof of consent and the required acknowledgements.
	5. **Limitation of liability**
		1. The aggregate liability of USTAN to the Contractor, arising out of any breach or breaches of this Agreement shall be limited to the sum identified against USTAN in Appendix B; and that of the Contractor to USTAN, shall not exceed twice the sum paid and/or payable to the Contractor by USTAN (at the date the loss was incurred) under this Agreement.
		2. Nothing in this Agreement excludes or limits the liability of either party:
			1. For death or personal injury caused by that party’s negligence; or
			2. for fraud or fraudulent misrepresentations; or
			3. to the extent that such liability cannot be limited or excluded by law; or
			4. for any liability that arises pursuant to an indemnity under this Agreement.
	6. **Indemnities**
		1. The Contractor shall indemnify and keep indemnified USTAN against any and all losses, liabilities, damages, fines, expenses and costs (including reasonable legal costs) for which USTAN may become liable arising out of or in connection with:
			1. any failure by the Contractor to comply with applicable legislation, rules, regulations and codes of practice (including EU procurement and state aid legislation) in the performance of the Project; and
			2. any claim that anything done in the performance of the Project infringes the Intellectual Property Rights of any third party, provided that the USTAN shall notify the Contractor in writing of any third party claims of which it receives notice without undue delay.
		2. The indemnity contained in Condition 7.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of USTAN or its agents.
	7. **Insurance**
		1. The Contractor shall, during the Period for the Project and at its own expense, have in force and maintain adequate insurance policies with a reputable insurance company, which shall be in the sum of £5 million in respect of any one incident and £5 million in aggregate.
		2. The Contractor shall ensure that any sub-contractor involved in carrying out the Project shall have in force and maintain insurance with a reputable insurance company, including (but not limited to) employer’s liability, public liability and professional indemnity, for such range of cover as the Contractor deems appropriate but covering at least all matters which are the subject of the indemnities or compensation obligations under these Conditions in such sum as may be specified in the Agreement, or, if no such sum is specified, the sum of not less than £1 million in respect of any single claim.
		3. The policy or policies of insurance referred to in Conditions 8.1 and 8.2 shall be shown to USTAN’s Representative, whenever he requests, together with satisfactory evidence of payment of premiums. In the event that non-disclosure of policies to third parties is a mandatory requirement set by insurers either a copy of the policy or satisfactory evidence of payment of premiums for the relevant types of insurance cover must be provided.
	8. **Records and Monitoring of Progress**
		1. In order to monitor the Contractor's performance of the Project, USTAN’s Representative or its servants or agents, JHI and the Scottish Ministers may:
			1. inspect at all reasonable times and, on reasonable notice, any and all records of the Contractor connected with its activities under this Agreement;
			2. enter into and inspect at all reasonable times and on reasonable notice, all facilities (whether at the Contractor's premises or elsewhere) used by the Contractor in its performance of its obligations under this Agreement,

and the Contractor specifically agrees to do all it reasonably can at all times to ensure compliance therewith.

* + 1. The Contractor shall retain or ensure that it has access to all records which relate to the Project. Without prejudice to Condition 10.1, on completion of the Project, or in the event that the Agreement is terminated pursuant to Condition 19 or otherwise, the Contractor shall at the direction of USTAN retain or transfer to USTAN those records relating to the Project as required by USTAN, or, where such records are in the possession of any third party and held on behalf of the Contractor, procure that the same is done. If USTAN requires the Contractor to transfer the records to USTAN or such other third party as USTAN may reasonably require, the Contractor shall be entitled to retain a copy of them. The Contractor shall not be obliged to do anything pursuant to this Condition 9.2 that would be contrary to any applicable legislation or in breach of any confidentiality obligations.
		2. Upon request from USTAN, the Contractor shall grant, during the term of the Project and for five years thereafter, to JHI and the Scottish Ministers access to all documents relating to the Project, including any work in progress, all documents produced in connection with the Project and any other information to which the JHI or Scottish Ministers may reasonably require access, in order to enable the JHI or Scottish Ministers, as the case may be, to ensure that the Project is being conducted, or have been conducted, in a manner consistent with the Prime Contract /or the CREW Funding Terms from the Scottish Ministers.
	1. **National Audit Act**
		1. For a period of not less than five (5) years after the completion of the Project or, where relevant, its termination, the Contractor shall retain in its possession all records and documentation relating to the Project.
		2. USTAN may require the Contractor to permit a representative of the Contractor and a designated accountant to examine such documents as USTAN may reasonably require for the purposes of the National Audit Act 1983 which are in the possession, custody or control of the Contractor, and USTAN may require the Contractor to produce such oral and/or written explanations as may reasonably be required.
		3. This Condition does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under section 6(3)(d) and 6(5) of the National Audit Act 1983.
	2. **Contractor’s Performance and Personnel**
		1. The Contractor shall properly manage and monitor the Project and inform USTAN immediately if any aspect of the Agreement is not being or cannot be performed.
		2. The Contractor will not, during the Period for the Project, do or omit to do anything in performance of the Project which would cause (i) JHI to be in breach of the CREW Funding Terms; or (ii) USTAN and/or JHI to be in breach of any relevant legislation, rules, regulations and codes of practice (including EU procurement and state aid legislation).
		3. The Contractor shall provide all the facilities and equipment that are necessary to complete the Project.
		4. The Contractor shall deploy sufficient personnel of appropriate qualifications, competence and experience to complete the Project to time and shall ensure that those personnel are properly managed and supervised.
		5. The Contractor shall give USTAN, if so requested, full particulars of all persons who are or may be at any time employed on the Project.
		6. The Contractor shall take all reasonable steps to avoid any changes of Key Personnel, but where the Contractor considers it necessary to do so, it will give USTAN not less than one month’s notice of any intention to change any Key Personnel and the reasons for such change. If USTAN considers (acting reasonably) that any such change of Key Personnel will have a negative impact on the Contractor’s ability to perform the CREW Project, USTAN shall be entitled to terminate this Agreement forthwith on giving written notice to the Contractor.
	3. **Confidentiality**
		1. Both Parties and each of its respective employees who receive confidential information from or on behalf of the other Party shall keep it secret at all times, and shall use it only to perform the obligations under this Agreement in relation to the Project, or as may be otherwise mutually agreed.
		2. The provisions of Condition 12.1 shall not apply to confidential information which:
			1. a Party knew prior to receiving it;
			2. becomes publicly available through no fault of the Party receiving it;
			3. is received from sources independent of the Party disclosing it or is otherwise in the public domain;
			4. is required by law to be disclosed including disclosure by a Party pursuant to an information request received under the applicable Freedom of Information legislation; or
			5. USTAN is required to disclose to JHI in accordance with the Prime Contract.
		3. For the avoidance of doubt, Condition 12.1 shall not apply to any confidential information that must be disclosed to the Scottish Ministers or other third parties in accordance with the CREW Funding Terms.
		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 or expiry of this Agreement except to the extent that any Party reasonably requires to retain any such confidential information and/or copies thereof for record-keeping and/or compliance purposes.
		5. The terms of this Condition 12 shall survive expiry or termination of this Agreement for a period of five (5) years.
	4. **Publication and Disclosure**
		1. Subject to the remainder of this Condition 13, the Contractor shall ensure that all publicity materials in respect of the Project (including any reports and publications) acknowledge the support of the Scottish Ministers given to CREW using the following wording:

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

* + 1. The Contractor shall ensure the CREW Report (as defined in Appendix C) is:
			1. prepared to meet certain criteria as notified by USTAN from time to time; and
			2. (without prejudice to Condition 13.3.1) submitted to USTAN and JHI for review at least forty five (45) days prior to publication. In the event USTAN reasonably requires any amendments to the CREW Report, including such amendments as may be required to ensure compliance with any criteria as may have been notified to the Contractor under Condition 13.2.1, USTAN shall notify the Contractor and the Contractor shall effect the required changes and re-submit the CREW Report to USTAN and JHI for review within such timescales as may be notified to it by USTAN.
		2. Under no circumstances shall the Contractor make any press release or public disclosure concerning the Project (including any Results) under this Agreement without:
			1. submitting to USTAN 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 USTAN, the Contractor shall remove any information from the publication which is reasonably believed to be confidential information prior to submission for publication; and
			2. USTAN has given its written consent to the Contractor that any such release or disclosure is permitted.
		3. USTAN shall ensure that the Contractor is appropriately acknowledged in publication of the final report, subject to the report being approved by CREW.
		4. Where the Project, or any matter related to it, has been identified as being sensitive by:
			1. the Contractor, or
			2. USTAN, as notified in writing to the Contractor,

the Contractor shall give written notice to be received by USTAN at least 45 working days before any planned public statement or other disclosure relating to the Project, providing details of the information proposed to be disclosed, the reason, and the medium of disclosure.

* + 1. The Parties acknowledges that, in order to be compliant with the Freedom of Information Act 2000, the Freedom of Information (Scotland) Act 2002, the Environmental Information Regulations 2004, the Environmental Information (Scotland) Regulations 2004 or any other applicable legislation governing access to information (the "FOI Legislation"), to which they may be subject any Party may be obliged to provide information, on request, to third parties that relates to this Agreement.
		2. In the event that a Party (“the receiving Party”) receives a request for information relating to the Agreement falling within the scope of the FOI Legislation, it shall be entitled to disclose such information as is necessary in order to ensure its compliance with the FOI Legislation. Where a Party reasonably considers that information is exempt from disclosure, it shall use reasonable endeavours to consult with the other Parties, but the receiving Party’s decision as to whether such information should be disclosed shall be final and binding.
		3. In the event that a Party requires the assistance of any other Party in supplying any information falling within the scope of the FOI legislation that is held or controlled by that Party or any other person engaged in relation to the Agreement, the other Party will provide such assistance, at its own cost within ten (10) days of receiving the request.
		4. The receiving Party shall not be liable for any loss, damage, harm or other detriment suffered by any other Party arising from the disclosure of any information falling within the scope of the FOI Legislation.
	1. **Data Protection**
		1. The parties agree that in respect of:
			1. USTAN Personal Data, the USTAN shall be the Controller and the Contractor shall be the Processor; and
			2. Contractor Personal Data, Contractor shall be the Controller and the USTAN 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 Contractor to carry out the Project for the Term. The Personal Data includes: (i) USTAN’s employee names and email addresses; (ii) Contractor’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 Contractor to USTAN.
		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 14 (“**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 14.5.2, 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 14.5 and the conditions in this clause 14.7 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 14 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 14.4.1; 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 14, 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. **Equipment**
		1. All equipment purchased by the Contractor for use on the Project shall, where reasonably practicable, be acquired by competitive tender.
		2. Unless otherwise agreed in writing with USTAN, the Contractor shall provide the equipment necessary for the provision of the Project.
		3. The Contractor shall maintain all items of equipment in good and serviceable condition.
		4. All equipment shall be at the risk of the Contractor and USTAN shall have no liability for any loss of or damage to any equipment.
	3. **Intellectual Property**

Specific conditions applying to Intellectual Property Rights arising from the Project are subject to the provisions of Appendix E.

* 1. **Infringement of Intellectual Property and Confidentiality between Parties**

Each Party shall inform the other Party promptly if it becomes aware of any infringement or potential infringement of any of the Results, and the Parties shall consult with each other to decide the best way to respond to such infringement.

* 1. **Infringement of Third Party Rights**

The Contractor shall notify USTAN as soon as reasonably possible if it becomes aware that any use of the Results infringes or may infringe the rights of any third party.

Without prejudice to the generality of the foregoing, if any warning letter or other notice of infringement is received by a Party, or legal suit or other action is brought against a Party, alleging infringement of third party rights in the manufacture, use or sale of any licensed product or use of any patents or Intellectual Property Rights developed during the Project, that party shall promptly provide full details to the other Party, and the Parties shall discuss the best way to respond.

* 1. **Termination**
		1. USTAN may terminate this Agreement immediately:
			1. upon giving eighty (80) days’ notice to the Contractor;
			2. upon giving written notice to the Contractor if the Contractor commits a material breach of any of its obligations under this Agreement and, in the case of a breach capable of remedy, the breach is not remedied within thirty (30) days of the Contractor receiving notice specifying the breach and requiring its remedy. For the purpose of this Condition 19.1.2 a breach shall be considered capable of remedy if the Contractor can comply with the relevant obligation(s) in all respects other than as to the time of performance; or
			3. upon giving written notice to the Contractor if the Contractor commits a persistent breach of any of the terms of this Agreement. For the purpose of this Condition 19.1.3, a breach shall be persistent where the Contractor 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:
			4. if the Contractor 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.
		2. Either Party may terminate this Agreement immediately in accordance with Condition 25.2 (Force Majeure).
		3. In the event that the Contractor uses the fees paid to it under this Agreement in a manner inconsistent with this Agreement and/or otherwise fails to comply with any of its obligations under this Agreement, then USTAN may issue a notice to the Contractor in accordance with Condition 26.1, identifying the default and, where possible, requiring the Contractor to remedy that default. In the event the default relates to the quality of work carried out by the Contractor, USTAN may, at no additional cost to USTAN, require additional work to be carried out by the Contractor as may be reasonably required to ensure that the Project is carried out to USTAN’s reasonable satisfaction within twenty five (25) days of receipt of such notice (or such other time as may be agreed between the Parties).
		4. If the Contractor fails to remedy the default within 25 days (or such other time as may be agreed between the Parties) of the above notice, or if USTAN reasonably considers that the default is not capable of remedy, USTAN may without prejudice to any other rights or remedies:
			1. claim such damages from the Contractor as may have been sustained in connection with the default;
			2. suspend payment; and/or
			3. where required under the Prime Contract, require the Contractor to repay, and the Contractor shall repay, such proportion of the funding paid to it under this Agreement as requested directly to JHI.
		5. The Contractor shall forthwith inform USTAN in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status, including, where the Contractor is a company as defined in the Companies Act 1985, any change in “control” as defined in Section 416 of the Income and Corporation Taxes Act 1988.
		6. On the occurrence of any of the events described in Condition 19.5 USTAN shall be entitled to terminate the Agreement by written notice to the Contractor with immediate effect.
		7. USTAN may terminate this Agreement immediately without liability upon written notice to the Contractor if the Scottish Ministers:
			1. withdraw part or all of the CREW funding; or
			2. reclaim part or all of the CREW funding.
		8. Except as provided in this Agreement, termination of the Agreement shall not affect:
			1. any right, obligation or liability of any Party which has accrued at the date of termination; and
			2. any of the provisions of this Agreement which are intended to continue to have effect after the Agreement has been terminated, including the provisions of Appendix B (*Pricing*) (in relation to payments due up to and including the date of termination), the provisions of Appendix C (*Reporting*), the provisions of Appendix E (*Intellectual Property*) and Conditions 5.2, 6, 9, 10, 12, 13, 14, 16, 17, 18, 19.8.2, 20, 22, 23, 24, 26, 27, 30, 31 of Appendix F (*Terms and Conditions*) .
	2. **Payment on termination**
		1. Without prejudice to any other rights or remedies of USTAN, in the event of the Agreement being terminated:
			1. by USTAN in accordance with Condition 19 by reason of the default of the Contractor; or
			2. otherwise by reason of the Contractor’s breach of the Agreement,

USTAN shall not be under any obligation to make any payment to the Contractor for such period as is reasonable for USTAN to assess the loss and/or damage suffered as a result of the termination.

* + 1. Where the Agreement is terminated by USTAN in accordance with Condition 19.7.2, the Contractor shall repay any or all funds paid to it under this Agreement as directed by USTAN in the termination notice to JHI within seven (7) days of receipt of written notice from USTAN.
		2. If the Contractor fails to pay any sum which may become due in accordance with Condition 20.2 above, then without prejudice to the USTAN’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 USTAN’s written notice requesting payment, commencing on the due date and continuing until fully paid.
		3. Any overpayment by USTAN to the Contractor, whether of the agreed price or Value Added Tax, shall be a sum of money recoverable by USTAN from the Contractor.
		4. Upon termination or expiry of this Agreement, the Contractor shall immediately cease using the CREW Logo.
		5. Upon expiry or termination of the Prime Contract, the Contractor will provide such reasonable assistance to USTAN as may be required to facilitate the smooth migration of the services provided by USTAN under the Prime Contract to JHI or a replacement supplier appointed by JHI (as the case may be).
	1. **Transfer of rights and obligations**
		1. The Contractor shall not sub-contract, transfer, assign, charge, or otherwise dispose of the Agreement or any part of it without the prior written consent of USTAN.
		2. The Contractor shall ensure, if so requested by USTAN, that an assignee enters into a novation agreement with USTAN to perform the Agreement as if the assignee were a party to the Agreement in lieu of the Contractor.
		3. USTAN may at any time, on written notice to the Contractor, transfer or assign all or any rights and/or obligations under the Agreement and the Contractor hereby agrees to enter into any and all written agreements as may be required for such transfer or assignment.
		4. Subject to Condition 21.1, the Contractor shall enter into a written sub-contract with the each sub-contractor which imposes on that sub-contractor terms which are equivalent to those set out in this Agreement. The Contractor shall provide to USTAN, upon request, copies of any sub-contracts. Any such sub-contract shall not relieve the Contractor of its obligations under the Agreement and the Contractor shall be responsible for the acts and/or omissions of the sub-contractor as though they were the acts or omissions of the Contractor. For the purposes of this Condition, “sub-contractor” shall mean those third parties to whom the Contractor sub-contracts responsibility for performance of any part of the Project and any third party to whom that third party sub-contracts responsibility for performance of any part of the Project.
		5. Where the Contractor enters into a sub-contract for the provision of services as part of the Project, the Contractor shall ensure that a term is included in the sub-contract which requires the Contractor to pay all sums due to the sub-contractor within 30 days after the Contractor has verified the relevant invoice.
		6. The Contractor shall use reasonable endeavours to verify the invoices promptly.
		7. Where the Contractor becomes liable to pay interest payments to a sub-contractor under the provisions of the Late Payments of Commercial Debts (Interest) Act 1998, USTAN will not reimburse those costs.
	2. **Rights of Third Parties**
		1. Save to the extent expressly set out in Condition 22.2, this Agreement is not intended nor shall it create any rights, entitlement, claims or benefits enforceable by any person that is not a party to it.
		2. The Contractor acknowledges that under the Prime Agreement, USTAN is obliged to procure the right for JHI to enforce certain terms of this Agreement on the Contractor. The Contractor therefore agrees to execute and send to JHI the letter attached in Appendix G to this Agreement promptly following execution of this Agreement by both parties and to do all things deemed reasonably necessary by USTAN to allow JHI to obtain the benefit of the relevant terms of this Agreement.
	3. **Waiver and variation**
		1. No delay by USTAN in enforcing or expressing any right, either arising out of the Agreement or any right in respect of any breach of the Agreement by the Contractor, shall constitute a waiver of such right.
		2. No waiver by USTAN of any breach of the Contractor's obligations shall constitute a waiver of any other prior or subsequent breach.
		3. Any variation of any provision of this Agreement must be effected in writing and issued by USTAN and signed for and on behalf of each of the Parties. No purported variation by any other means shall bind USTAN or the Contractor.
	4. **Severance**

If any condition or provision of the Agreement which is not of a fundamental nature is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction in any proceedings relating to the Agreement, such provision shall be severed and the validity or enforceability of the remainder of the Agreement shall not be affected thereby.

* 1. **Force Majeure**
		1. Any delays in or failure of performance by either Party under this Agreement will not be considered a breach of this Agreement 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 shall be extended by the actual time of delay caused by any such occurrence.
		2. If the Contractor is prevented from performing its obligations under this Agreement pursuant to Condition 25.1 for a continuous period of two (2) months, USTAN may terminate this Agreement on giving the Contractor one months’ written notice provided that the Contractor remains so prevented on expiry of the notice period.
	2. **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.
	3. **Entire agreement**

The Agreement together with these Terms and Conditions and any variation made in accordance with Condition 23 sets out the entire agreement between the parties and supersedes any prior agreement whether formal or informal and whether legally within the Agreement.

* 1. **Legal Relationship**

Nothing in this Agreement shall be construed so as to create a partnership or joint venture between the parties or have the effect of making any employee of any one party a servant of any of the other parties. Neither party shall act or describe itself as the agent of the other nor shall it make or represent that it has authority to make any commitments on the other's behalf.

* 1. **Anti-Bribery**
		1. The Contractor shall:
			1. comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 as may be amended from time to time (the “Relevant Requirements”);
			2. shall have and maintain appropriate policies and procedures to ensure compliance with the Relevant Requirements;
			3. immediately report to USTAN any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this Agreement.
	2. **Dispute resolution**
		1. The relevant 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 Condition 30.1 the dispute may, by agreement between the relevant parties, be referred to the Head of Research Business Development and Contracts in the case of USTAN and to [ insert details] in the case of the Contractor in an attempt to resolve the issue. A Party may bring proceedings in accordance with Condition 31 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 Condition.
	3. **Governing Law**

The Agreement is made in Scotland and shall be governed by and interpreted in accordance with Scots Law and shall be subject to the exclusive jurisdiction of the Courts of Scotland.

THIS IS THE APPENDIX G REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN USTAN AND THE CONTRACTOR

1. APPENDIX G – LETTER TO JHI

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

|  |  |
| --- | --- |
| Derek LeslieThe James Hutton InstituteInvergowrieDundeeDD2 5DA |  [Insert date]  |
|  |

Dear Sirs

Centre of Expertise for Waters (“CREW”)

CREW Project [insert project code]

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

We refer to the CREW project agreement entered into between The University Court of the University of St Andrews and [insert name of Contractor] (“we”) dated [insert date] in respect of the abovementioned CREW Project (“Research Agreement”).

We acknowledge that certain provisions of the Research 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 Research Agreement shall be for the benefit of, and be directly enforceable by, the Institute:

* Paragraphs 13 and 14 of Appendix B to the Research Agreement;
* Appendix E to the Research Agreement;
* Condition 5.2 of Appendix F to the Research Agreement;
* Condition 19.4.3 of Appendix F to the Research Agreement; and
* Conditions 20.2 and 20.3 of Appendix F to the Research Agreement.

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 Contractor address].

Yours faithfully

……………………………

For and on behalf of [insert Contractor 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

THIS IS THE APPENDIX H REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN USTAN AND THE CONTRACTOR

1. APPENDIX H – CREW LOGO AND BRAND GUIDELINES

**See CREW Logo guidelines document**