STANDARD TERMS & CONDITIONS (GOODS & SERVICES)

1. INTERPRETATION

1.1 Unless the context otherwise states or requires:

(a) the terms defined in the Order shall have the meaning given to them there when used in these Standard Terms & Conditions; and

(b) all other capitalised words used in these Standard Terms & Conditions shall have the meanings set out below:

Agreement: the agreement between Kew and the Supplier for the purchase of Goods and/or Services comprising the Order, these Standard Terms & Conditions, and any other documents expressly incorporated by reference.

Commencement Date: has the meaning set out in Clause 2.2.

Contractors' Code: RBG Kew Contractors' Health, Safety, Environment and Sustainability Code of Practice providing safety, welfare, health and other guidelines for contractors working on the Kew Premises, as updated from time to time.

Deliverables: all documents, products and materials specified in the Service Specification or developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, data, specifications and reports (including drafts).

Delivery Location: such location within the Kew Premises as stated in the Order or instructed by Kew before delivery.

Standard Terms & Conditions: these standard terms and conditions as amended from time to time in accordance with Clause 16.1116.10.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any related plans and drawings that is agreed in writing by Kew and the Supplier.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Kew: Either The Board of Trustees of the Royal Botanic Gardens, Kew, or its affiliate (and wholly owned trading subsidiary) RBG Kew Enterprises Limited, as stated on the Order.

Kew Materials: all materials, equipment and tools, drawings, specifications and data supplied by Kew to the Supplier.

Kew Premises: Either the Royal Botanic Gardens, Kew, Richmond, Surrey TW9 3AB or Wakehurst, Ardingly, West Sussex RH17 6TN as stated in the Order, or instructed by Kew before delivery.

Order: Kew's order for the purchase of Goods and/or Services, as set out in Part 1 (Order), the purchase order form, or in Kew's written acceptance of the Supplier's quotation, as the case may be.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the Agreement as set out in the Service Specification.

Service Specification: the description or specification for Services agreed in writing by Kew and the Supplier.

Special Conditions: any special conditions of the Agreement stated in the Order, or otherwise agreed in writing by Kew and the Supplier.

Supplier: the person or firm from whom Kew purchases the Goods and/or Services as stated on the Order.

Supplier Personnel: the Supplier's employees, agents, consultants, contractors, sub-contractors, suppliers and other persons who will be involved in providing the Goods and/or Services.

1.2 In this Agreement unless the context otherwise requires:

(a) words importing the singular include the plural and vice versa;

(b) any words following the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

(c) reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;

(d) reference to one gender includes a reference to the other gender; and

(e) clause headings do not affect the interpretation of these Standard Terms & Conditions.

2. BASIS OF AGREEMENT

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

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

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

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

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

2.3 The terms of this Agreement shall apply to the provision of the Goods and/or Services to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 In the event of any conflict between these Standard Terms & Conditions and any Special Conditions, the Special Conditions shall take precedence over any other provisions of these Standard Terms & Conditions.

2.5 All of these Standard Terms & Conditions shall apply to the purchase of both Goods and Services except where the application to one or the other is specified.

3. SUPPLY OF GOODS

3.1 The Supplier shall ensure that the Goods shall:

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

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

(c) where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery (unless otherwise specified in the Special Conditions); and

(d) comply with all applicable statutory and regulatory requirements relating to (without limitation) the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

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

3.3 Kew shall have the right to inspect and test the Goods at any time before delivery.

3.4 If following such inspection or testing Kew considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at Clause 3.1, Kew shall inform the Supplier and the Supplier shall immediately (at its own cost) take such remedial action as is necessary to ensure compliance.

3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Agreement, and Kew shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

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

(b) any packaging used is capable of easy recovery for further use or recycling;

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

(d) if the Supplier requires Kew to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

(a) on the date specified in the Order or, if no such date is specified, then as may be reasonable in the circumstances, being no later than 10 working days of the date of the Order to the Delivery Location; and

(b) during Kew's normal hours of business, or as instructed by Kew.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 If the Supplier:

(a) delivers less Goods than the quantity ordered and the quantity delivered is outside of the permitted tolerances stated on the Order (if any), Kew may reject the Goods; or

(b) delivers more Goods than the quantity ordered and the quantity delivered is outside of the permitted tolerances as stated on the Order (if any) Kew may at its sole discretion reject the Goods or the excess Goods,

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

4.5 The Supplier shall not deliver the Goods in instalments without Kew's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Kew to the remedies set out in Clause 8.

4.6 Title to the Goods shall pass on the earlier of payment or the completion of delivery of the Goods in question in accordance with Clause 4.3.

4.7 The risk in the Goods shall pass to Kew on completion of delivery in accordance with Clause 4.3.

5. SUPPLY OF SERVICES

5.1 The Supplier shall provide the Services to Kew in accordance with the terms of the Agreement and meet all the relevant dates for provision of the Services stated in the Order or, if no such dates are specified, as notified to the Supplier by Kew.

5.2 In providing the Services, the Supplier shall:

(a) co-operate with Kew in all matters relating to the Services, and comply with all instructions of Kew;

(b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

(c) use personnel who satisfy all Supplier Personnel Requirements set out in the Order and who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;

(d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by Kew;

(e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;

(f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Kew, will be free from defects in workmanship, installation and design;

(g) obtain and at all times maintain all necessary licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement in respect of the Services, and comply with all applicable laws and regulations;

(h) hold Kew Materials in safe custody at its own risk, maintain Kew Materials in good condition until returned to Kew, and not dispose or use Kew Materials other than in accordance with Kew's written instructions or authorisation;

(i) not do or omit to do anything which may cause Kew to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Kew may rely or act on the Services.

5.3 Where Key Personnel are specified in the Order the Supplier shall:

(a) ensure that the Key Personnel perform the role that has been allocated to them;

(b) ensure that the Key Personnel will not be released from supplying the Services without the agreement of Kew, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other extenuating circumstances;

(c) ensure any replacements to the Key Personnel are subject to Kew's approval and of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and shall be suitable for the responsibilities of that person in relation to the Services; and

(d) (at Kew's request) promptly remove any Key Personnel whose continued presence would in the reasonable opinion of Kew be undesirable.

5.4 Kew shall not unreasonably withhold its agreement or approval under Clauses 5.3(b) or 5.3(c), such agreement and approval shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on the Agreement which could be caused by a change in Key Personnel.

5.5 The Supplier shall implement any recommendations and requirements made by Kew to modify the provision of the Services as soon as reasonably practicable.

5.6 Kew shall have the right to examine the manner in which the Supplier supplies the Services (including the inspection and testing of the Deliverables at any time before delivery) and the Supplier shall provide free of charge such information and facilities as is reasonably required for these purposes. In this clause Services include planning or preliminary work in connection with the supply of Services.

5.7 If following such inspection or testing Kew considers that the Services or the Deliverables do not conform or are unlikely to comply with the Supplier's undertakings in accordance with this Agreement, Kew shall inform the Supplier and the Supplier shall immediately (at its own cost) take such remedial action as is necessary to ensure compliance.

5.8 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Services and the Deliverables and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Agreement, and Kew shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

6. GOODS AND SERVICES

6.1 Where any access to Kew Premises is necessary in connection with the delivery or installation of Goods or the provision of Services the Supplier shall at all times observe all health and safety rules and regulations including all relevant provisions of the Construction (Design and Management) Regulations 2015 and any other security requirements that apply at Kew Premises and comply with the reasonable instructions and requirements of Kew.

6.2 Where any work by the Supplier is carried out on site at Kew Premises, the Supplier shall comply with the Contractors' Code.

6.3 The Supplier shall have due regard to and comply with the following policies in so far as relevant to the Agreement:
(a) Retail, Ethical and Environmental Sourcing Policy (provided separately, if applicable);
(b) Kew Site Biosecurity Guidelines (provided separately, if applicable); and
(c) Data Processor Schedule (attached hereto or otherwise available at www.kew.org).

6.4 The Supplier acknowledges and agrees that RBG Kew is a world renowned charity, concerned with the research and conservation of plants. As such, it is a material condition of this Agreement that the Supplier ensures that the provenance, production, procurement and delivery of all Goods and Deliverables is sustainable and ethical, and in accordance with all laws and regulations including, but not limited to the DEFRA Timber Procurement Policy (as published on Gov.uk). The Supplier agrees that the supply of Goods, Services and Deliverables shall be undertaken in such a way as to minimise damage to the environment and the Supplier should immediately consult with Kew if it is in any doubt as to its ability to comply with this Clause.

6.5 Recall of Goods
(a) If either Kew or the Supplier is the subject of a directive, court order or other request of a governmental or regulatory authority to withdraw any Goods from the market (**Recall Notice**) it shall immediately notify the other party in writing enclosing a copy of the Recall Notice.
(b) In the event Kew or the Supplier is the subject of a Recall Notice, or the Supplier voluntarily decides to recall any Goods because such Goods may violate any laws or regulations or for any other reason:
(i) the Parties shall cooperate fully with one another in connection with any recall; and
(ii) Supplier shall reimburse Kew for the price paid by Kew for such recalled Goods, all of the costs and expenses actually incurred by Kew in connection with the recall including, but not limited to, costs of retrieving Goods already delivered to customers, costs and expenses Kew is required to pay for notification, shipping and handling charges, and such other costs as may be reasonably related to the recall.

7. STATUTORY OBLIGATIONS AND OTHER REQUIREMENTS

7.1 Whilst providing the Goods and/or Services, the Supplier shall comply with all applicable current laws, statutes, regulations, codes of practice and sanctions, (**Legislation**) including those relating to data protection, health, safety, fire, food and the environment. The Supplier shall obtain and at all times maintain all necessary licences and consents.

7.2 **Safeguarding**. Supplier shall comply with Kew's safeguarding policies and procedures, to protect children and vulnerable adults, including but not limited to following Kew's safeguarding Code of Good Practice, reporting procedures and if required, ensuring that relevant Supplier Personnel undertake training and Disclosure and Barring Service (DBS) checks before being permitted access to the Kew Premises. Supplier shall bear the costs of all required DBS checks that Kew, in its sole discretion, determines are necessary (on its own behalf, and on behalf of all Supplier Personnel).

7.3 **Discrimination**. The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and the Human Rights Act 1998 or other relevant or equivalent legislation.

7.4 **Modern Slavery**. Supplier warrants and represents that it complies with the Modern Slavery Act 2015 and in particular it does not engage in, facilitate or allow any form of:
(a) slavery, servitude, forced/compulsory labour or exploitation
(b) force, threat or deception to obtain services from anyone including children and other vulnerable persons;
(c) human trafficking, all as defined within the Modern Slavery Act 2015.

7.5 **Anti-facilitation of tax evasion**. The Supplier shall:
(a) not engage in any activity, practice or conduct which would constitute either a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017 or a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;
(b) promptly report to Kew any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of this Agreement; and
(c) on request by Kew, certify to Kew in writing signed by an officer of the Supplier, compliance with this Clause 7.5 by the Supplier and Supplier Personnel. The Supplier shall provide such supporting evidence of compliance as Kew may reasonably request.

7.6 **Anti-Bribery.** In these Clauses 7.6 – 7.12, the following definitions apply:
Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes or practice issued by the relevant government department concerning the legislation.
Prohibited Act: the following constitute Prohibited Acts:
(a) to directly or indirectly offer, promise or give any person working for or engaged by Kew a financial or other advantage to:
(i) induce that person to perform improperly a relevant function or activity; or
(ii) reward that person for improper performance of a relevant function or activity;
(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Agreement;
(c) committing any offence:
(i) under the Bribery Act;
(ii) under legislation creating offences concerning fraudulent acts;
(iii) at common law concerning fraudulent acts relating to the Agreement or any other agreement with Kew; or
(iv) defrauding, attempting to defraud or conspiring to defraud Kew.

7.7 The Supplier shall not, and shall procure that all Supplier Personnel shall not, in connection with the Agreement commit a Prohibited Act.

7.8 The Supplier warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by Kew, or that an agreement has been reached to that effect, in connection with the execution of the Agreement, excluding any arrangement of which full details have been disclosed in writing to Kew's Director of Resources before the Commencement Date.

7.9 The Supplier shall have an anti-bribery policy (which shall be disclosed to Kew on request) to prevent any Supplier Personnel from committing a Prohibited Act and shall enforce it where appropriate.

7.10 If any breach of Clauses 7.7 - 7.8 is suspected or known, the Supplier must notify Kew immediately and must respond promptly to Kew's enquiries, co-operate with any investigation, and allow Kew to audit books, records, and any other relevant documentation.

7.11 Kew may terminate the Agreement by written notice with immediate effect if the Supplieror Supplier Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches any of Clauses 7.7 - 7.8.

7.12 Any dispute relating to
(a) the interpretation of Clauses 7.6 to 7.11; or
(b) the amount or value of any gift, consideration or commission,
shall be determined by Kew and its decision shall be final and conclusive.

7.13 **Supplier Personnel.** The Supplier confirms that it takes all reasonable steps to secure the observance of this Clause 7 by the Supplier and all Supplier Personnel involved in the execution of the Agreement. The Supplier shall be responsible for the observance by all Supplier Personnel of such Clauses, and shall be directly liable to Kew for any breach thereof by any Supplier Personnel.

7.14 **Breach.** Any breach of this Clause 7 shall be considered a material breach under Clause 14.1(a).

8. KEW REMEDIES

8.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, Kew shall, without limiting its other rights or remedies, have one or more of the following rights:
(a) to **terminate** the Agreement with immediate effect by giving written notice to the Supplier;
(b) to **refuse** to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
(c) to **recover** from the Supplier any costs incurred by Kew in obtaining substitute goods and/or services from a third party;
(d) where Kew has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums **refunded** by the Supplier; and
(e) to **claim damages** for any additional costs, loss or expenses incurred by Kew which are in any way attributable to the Supplier's failure to meet such dates.

8.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in Clause 3.1, then, without limiting its other rights or remedies, Kew shall have one or more of the following rights, whether or not it has accepted the Goods:
(a) to **reject** the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
(b) to **terminate** the Agreement with immediate effect by giving written notice to the Supplier;
(c) to require the Supplier to **repair or replace** the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
(d) to **refuse** to accept any subsequent delivery of the Goods which the Supplier attempts to make;
(e) to **recover** from the Supplier any expenditure incurred by Kew in obtaining substitute goods from a third party; and
(f) to claim damages for any additional costs, loss or expenses incurred by Kew arising from the Supplier's failure to supply Goods in accordance with Clause 3.1.

8.3 This Agreement shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

8.4 Kew's rights under the Agreement are in addition to its rights and remedies implied by statute and common law.

9. KEW'S OBLIGATIONS

9.1 Subject to the Supplier complying with the Agreement, Kew shall:
(a) provide the Supplier with reasonable access at reasonable times to the Kew Premises for the purpose of providing the Services; and
(b) provide such facilities and information as the Supplier may reasonably request for the provision of the Services and Kew considers reasonably necessary for the purpose of providing the Services.

10. CHARGES AND PAYMENT

10.1 The price for the Goods:
(a) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date;
(b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by Kew. No extra charges shall be effective unless agreed in writing by Kew.

10.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. The charges for Services set out in the Order shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

10.3 Unless otherwise specified in the Order: in respect of Goods, the Supplier shall invoice Kew on or at any time after completion of delivery; and in respect of Services, the Supplier shall invoice Kew on completion of the Services.

10.4 Each invoice for the supply of the Goods and/or Services shall include such supporting information required by Kew to verify the accuracy of the invoice, including but not limited to the relevant contract number.

10.5 Where the Supplier submits an invoice to Kew in accordance with Clause 10.4, Kew will consider and verify that invoice in a timely fashion.

10.6 In consideration of the supply of Goods and/or Services by the Supplier, Kew shall pay the invoiced amounts within 30 days from the date on which Kew has determined that the invoice is valid and undisputed.

10.7 Where Kew fails to consider and verify an invoice in a timely fashion in accordance with Clause 10.5, the invoice shall be regarded as valid and undisputed for the purposes of clause 10.6 after a reasonable time has passed.

10.8 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
(a) provisions having the same effect as clauses 10.4-10.7 of this Agreement; and
(b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 10.4-10.7 of this Agreement.

In this Clause, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from Kew in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

10.9 All amounts payable by Kew under the Agreement are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Kew shall on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or

Services at the same time as payment is due for the supply of Goods and/or Services.

10.10 If either party fails to pay any amount properly due and payable by it under the Agreement, the other party shall have the right to charge interest on the overdue amount at the rate of 3 per cent per annum above the base rate for the time being of Lloyds Bank accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that are disputed in good faith.

10.11 Kew may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by Kew to the Supplier under the Agreement.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 In respect of the Goods and any goods that are transferred to Kew as part of the Services under the Agreement, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Kew, it will have full and unrestricted rights to sell and transfer all such items to Kew.

11.2 The Supplier assigns to Kew, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.

11.3 The Supplier shall obtain waivers of all moral rights in the products of the Services, including for the avoidance of doubt the Deliverables, to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

11.4 The Supplier shall, promptly at Kew's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Kew may from time to time require for the purpose of securing for Kew the full benefit of the Agreement, including all right, title and interest in and to the Intellectual Property Rights assigned to Kew in accordance with Clause 11.2.

11.5 All Kew Materials are the exclusive property of Kew and Kew shall retain all Intellectual Property Rights in the Kew Materials, any amendments or improvements to and anything derived from, the Kew Materials. The Supplier is granted a revocable, non-exclusive, royalty-free licence to use the Kew Materials (and any content derived from the Kew Materials) for the purposes of fulfilling this Agreement only, such licence to automatically terminate on completion of delivery of the Goods and/or Services (or, if sooner, on the expiry or termination of this Agreement).

11.6 Kew reserves the right to use any images in relation to the Services and the Deliverables for marketing and fundraising purposes generally.

12. INDEMNITY

12.1 The Supplier shall keep Kew (and its affiliate) indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Kew (and/or its affiliate) as a result of or in connection with:

(a) any claim made against Kew (and/or its affiliate) by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

(b) any claim made against Kew (and/or its affiliate) by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by the Supplier, its employees, agents or subcontractors;

(c) any claim made against Kew (and/or its affiliate) for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services;

(d) any costs incurred in repairing or making good any damage to the Kew Premises or any property belonging to Kew (and/or its affiliate) caused by the presence, installation and/or removal of any equipment or materials used by the Supplier in the provision of the Services; and

(e) any loss incurred in connection with a recall of the Goods;

(f) any breach of the Agreement by the Supplier.

12.2 For the duration of the Agreement and for a period of 1 year thereafter, the Supplier shall maintain in force, with a reputable insurance company,

(a) professional indemnity insurance to the minimum value of £2 million;

(b) product liability insurance to the minimum value of £5 million per incident; and

(c) public liability insurance to the minimum value of £5 million,

to cover the liabilities that may arise under or in connection with the Agreement and shall, on Kew's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

12.3 This Clause 12 shall survive termination of the Agreement.

13. CONFIDENTIALITY

13.1 A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents, affiliates or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents, affiliates or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Agreement, and shall ensure that such employees, agents, affiliates or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 13 shall survive termination of the Agreement for a period of five (5) years from the date of termination.

13.2 The Supplier acknowledges that Kew is subject to the requirements of and may be obliged to disclose information in accordance with the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time and the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or the relevant government department in relation to such legislation and regulations (the Freedom of Information Act 2000 and the Environmental Information Regulations 2004).

14. TERMINATION

14.1 Without limiting its other rights or remedies, either party may terminate the Agreement with immediate effect by giving written notice to the other if:

(a) the other party commits a material or persistent breach of the Agreement and (if such a breach is remediable) fails to remedy that breach within 15 days of receipt of notice in writing of the breach;

(b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

(c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction;

(d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction;

(e) the other party (being an individual) is the subject of a bankruptcy petition order;

(f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

(g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

(h) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

(i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(j) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 14.1(b) to Clause 14.1(i) (inclusive);

(k) the other party suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business;

(l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation; or

(m) it reasonably believes that any of the events mentioned above is about to occur to the other party's business and it notifies the other party of this belief.

14.2 Without limiting its other rights or remedies, Kew may terminate the Agreement:

(a) by giving the Supplier one month's written notice; or

(b) with immediate effect by giving written notice to the Supplier, in which case Kew shall pay the Supplier fair and reasonable compensation:

(i) (in respect of the purchase of Goods), for Goods supplied by the Supplier prior to termination and in accordance with the Agreement but where the payment has yet to be made by Kew;

(ii) (in respect of the purchase of Services) commensurate with the Services properly performed and expenses incurred or to be incurred that are rechargeable under the Agreement and cannot be recovered or mitigated by the Supplier as at the date of termination.

14.3 Where advance payments have already been paid to the Supplier under the Agreement and such payments exceed the amount properly due to the Supplier for Goods and Services delivered and any compensation payable under Clause 14.2(b) as at the date of termination, any such excess shall be promptly refunded to Kew by the Supplier.

14.4 In any of the circumstances in these Conditions in which Kew may terminate the Agreement, where both Goods and Services are supplied, Kew may instead terminate part of the Agreement in respect of the Goods, or in respect of the Services, and the Agreement shall continue in respect of the remaining supply.

15. CONSEQUENCES OF TERMINATION

15.1 On termination of the Agreement or any part of it for any reason:

(a) where the Services are terminated, the Supplier shall immediately deliver to Kew all Deliverables, whether or not then complete, and return all Kew Materials. If the Supplier fails to do so, then Kew may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement;

(b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination; and

(c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

16. GENERAL

16.1 Publicity, trade marks and reputation:

(a) The Supplier may not refer to Kew or the engagement under the Agreement in any advertisement or publicity without the prior written consent of Kew.

(b) In providing the Services and carrying out its obligations under the Agreement, the Supplier will, and shall ensure that Supplier Personnel (including any Key Personnel) will, not bring Kew, its name or logos into disrepute in any way.

(c) The Supplier shall not use Kew's logo(s) or trade mark(s) without the prior written consent of Kew.

16.2 Force majeure: Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Agreement if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable (**Force Majeure Event**). In exceptional circumstances, Kew may close the whole or part of the Kew Premises to the public where there is or is a reasonable expectation of a Force Majeure Event including adverse weather or an outbreak of pests or disease and in the event of the death of the UK monarch and/or their spouse, on the day the death is publicly announced, the following day and the day of the funeral (and such closures shall be treated as Force Majeure Events). Where Kew makes such a decision it shall provide the Supplier with as much notice as reasonably practicable and will keep the Supplier advised of the situation. If a Force Majeure Event prevents the Supplier from supplying the Goods and/or Services, Kew shall have the right, without limiting its other rights or remedies, to terminate the Agreement with immediate effect by giving written notice to the Supplier.

16.3 Audit

(a) The Supplier shall keep and maintain until 6 years after the Agreement has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Agreement including the Goods and/or Services supplied under it, all expenditure reimbursed by Kew, and all payments made by Kew. The Supplier shall on request afford Kew or Kew's representatives such access to those records and processes as may be requested by Kew in connection with the Agreement.

(b) The Supplier shall permit duly authorised representatives of the National Audit Office and/or the Comptroller and Auditor General access free of charge to all such records, documents and other information as they may reasonably require for the purposes of any audit of Kew and any examination into the economy, efficiency and effectiveness with which Kew has used its resources. The Supplier shall provide such explanations as are reasonably required for these purposes.

16.4 Assignment and subcontracting:

(a) Unless otherwise stated in the Order, the Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement without the prior written consent of Kew. The Supplier will not be relieved of any of its obligations and/or duties under the Agreement by virtue of Kew agreeing in writing to the sub-contracting of any or all of its obligations and/or duties under the Agreement (including, for the avoidance of doubt, any

obligations and/or duties performed by any sub-contractors expressly listed in the Order).

(b) Kew may at any time assign, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.

16.5 **Notices:** Any notice or other communication required to be given to a party under or in connection with the Agreement shall be in writing and shall be delivered to the other party personally or sent by prepaid second-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

16.6 **Waiver and cumulative remedies:**

(a) A waiver of any right under the Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

(b) Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

16.7 **Severance:** If a court or any other competent authority finds that any provision (or part of any provision) of the Agreement is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected.

16.8 **No partnership:** Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

16.9 **Third parties:** A person who is not a party to the Agreement shall not have any rights under or in connection with it, save that any affiliate of Kew shall be entitled to enjoy the benefit of and enforce such contractual provisions as are expressed to be for the benefit of it.

16.10 **Approvals.** Notwithstanding any other provision of this Agreement, the terms 'acceptance' 'approval' or similar when used in the context of any acceptance or approval to be given by or on behalf of Kew has the meaning 'acceptance of general principles only' and no such acceptance or approval shall diminish or relieve the Supplier from any of his obligations or liabilities under this Agreement (save for the obligation to seek or obtain such acceptance or approval).

16.11 **Variation:** Any variation, including any additional terms and conditions, to the Agreement shall only be binding when agreed in writing by Kew.

16.12 **Entire Agreement:** This Agreement sets out the entire agreement and understanding between the parties in respect of the matters covered herein to the exclusion of any other terms that the Trader seeks to impose or incorporate, or which might otherwise be implied by trade, custom, practice or course of dealing.

16.13 **Counterparts:** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same agreement. No counterpart shall be effective until each party has executed at least one counterpart. The transmission of an executed counterpart of this Agreement (but not just a signature page) by e-mail (such as in PDF) will take effect as the delivery of an executed original counterpart of this Agreement.

16.14 **Dispute Resolution:** If at any time, any dispute shall arise between the parties in relation to this Agreement, the parties agree that in order to resolve any such dispute, they shall first attempt to resolve the dispute by holding a meeting and discussing the dispute in good faith with a view to agreeing the action to be taken to solve the issues giving rise to the dispute.

16.15 **Governing law and jurisdiction:** The Agreement, and any dispute or claim arising out of or in connection with it (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.