

FRAMEWORK AGREEMENT RE VISITOR PROGRAMMES (MULTI-SUPPLIER, MULTI-PURCHASE)

(Contract Reference[Insert Contract reference and title])

THIS AGREEMENT is made on the date of the last signature.

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| KEW <i>(check the box of the contracting Kew entity)</i> | <input type="checkbox"/> The Board of Trustees of the Royal Botanic Gardens, Kew a non-departmental public body with exempt charitable status whose principal place of business is at The Royal Botanic Gardens, Kew, Richmond, TW9 3AB <input type="checkbox"/> RBG Kew Enterprises Limited (registered company no. 02798886) with registered office at The Royal Botanic Gardens, Kew, Richmond, TW9 3AB |
| SUPPLIER | (Name) (Address/Registered office) (Company no.) |
| SERVICES / DELIVERABLES | The <i>[insert high level description of nature of outputs]</i> services and deliverables to be provided by the Supplier under this Framework pursuant to and as more particularly described in <i>[the Specification, which may be made up of an invitation to tender (ITT), Statement of Requirements plus Supplier's Technical Response as set out in Annex 1 of this Framework – Update to reflect full tender pack and relevant documents for each procurement]</i> |
| CHARGES | Any overarching Charges or rates are set out in Annex 2 to this Framework and these shall remain fixed for the duration of this Framework (unless otherwise agreed between the Parties). |
| START DATE | <i>[insert start date of Framework Agreement]</i> |
| END DATE | <i>[insert end date of Framework Agreement]</i> |
| Extension Options | <i>[Insert details of any potential extension allowed]</i> |

1.1 Kew has undertaken a procurement exercise in respect of which the Supplier (and a number of other providers) were successful and will provide the Services / Deliverables on a roster / call off basis. The details of the call-off mechanism are set out in the *[Part 1: ITT Schedule 3 – update for each procurement if different]*.

1.2 This Framework Agreement governs the overall relationship in relation to Services / Deliverables provided by the Supplier to Kew from time to time against specific Orders. Where Services and Deliverables are required, an Order in the form of template attached as Schedule 1 to this Framework shall be completed and signed by the Parties for any Services and / or Deliverables required under this Framework Agreement. Unless and until an Order is executed, Kew shall be under no obligation to purchase Services or Deliverables from the Supplier.

1.3 Each Order is made under and subject to the terms and conditions of this Framework Agreement, including the attached General Terms and Conditions and any documents attached or referred to as annexes and any Special Conditions set out in the Order. In the event of any discrepancy between the terms and conditions of this Framework and any Order, the following shall prevail to the extent necessary to deal with such discrepancy:

1. The Order (including any Special Terms and Conditions)
2. The General Terms and Conditions
3. Other Annexes attached to the General Terms and Conditions including the Specification

1.4 This Framework Agreement shall commence on the Start Date and shall expire on the End Date, subject to earlier termination as follows:

1.4.1 Each party shall have the right to terminate this Framework Agreement and all Orders in force at that date in the event that the party in question has the right to terminate any Order pursuant to Clause 11.1 of the attached General Terms & Conditions (breach or insolvency related circumstances).

1.4.2 Kew shall have the right to terminate this Framework Agreement pursuant to Clause 11.2 of the General Terms and Conditions (termination without cause). In such circumstances all Orders in force at that date shall also automatically terminate, unless otherwise agreed in writing between the Parties.

1.5 The Parties each agree to the terms of the Framework Agreement (which expression includes the attached Standard Terms and Conditions (Visitor Programmes), the Order and any Special Conditions and any documents attached as Annexes).

Signature:

Name:

Date:

**Authorised signatory
on behalf of KEW**

Signature:

Name:

Date

**Authorised signatory
on behalf of the SUPPLIER**

**SCHEDULE 1 OF FRAMEWORK AGREEMENT: ORDER (RE FRAMEWORK AGREEMENT FOR VISITOR PROGRAMMES
(MULTI-SUPPLIER – MULTI-PURCHASE)**

THIS AGREEMENT is made as of the date of the last signature.

BETWEEN

- (1) **[THE BOARD OF TRUSTEES OF THE ROYAL BOTANIC GARDENS, KEW**, a non-departmental public body with exempt charitable status whose principal place of business is at The Royal Botanic Gardens, Kew, Richmond, Surrey TW9 3AB]/ **[RBG KEW ENTERPRISES LIMITED** (registered company number 2798886) whose registered office is at The Royal Botanic Gardens, Kew, Richmond, Surrey TW9 3AB] ("**Kew**"; and
- (2) **[•]** (registered company number **[•]**) whose registered office is at **[•]** (the "**Supplier**") **[Insert full name, company number and registered address of counterparty]**

PART 1: ORDER

(This Order is subject to the overarching Framework Agreement executed between the Parties)

A. REPRESENTATIVES DETAILS

| | | |
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| 1. | Kew Representative | Contact person: [•] Tel no.: [•] Email: [•] |
| 2. | Supplier Representative | Contact person: [•] Tel no.: [•] Email: [•] |

B. EVENT DETAILS

| | | |
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| 3. | Event | [•] <i>Insert name of event to which Services relate</i> |
| 4. | Premises | Kew premises at [the Royal Botanic Gardens, Kew, Richmond, Surrey TW9 3AB] / [Wakehurst, Ardingly, West Sussex RH17 6TN] <i>Delete as applicable</i> |
| 5. | Delivery Location | [•] <i>Insert details of any specific location(s) within the Premises where the Services / Deliverables will be provided / installed</i> |
| 6. | Services | <p>The Supplier shall provide the following Services:</p> <ul style="list-style-type: none"> [brief description] <p>[as further detailed in Annex 1].</p> <p><i>Insert clear & brief description of the Services such as compose & perform musical piece, write a story or theatre script, devise interactive trail, ... This can be expanded upon in the Annex if necessary, which should then be referenced here. If an Annex is attached, you will also need to clarify which takes precedence in the event of inconsistencies, ie the Annex or this service description. If a supplemental Annex is not used, remove the above reference to it</i></p> |
| 7. | Deliverables (i.e. any items provided or created, but excluding Equipment) | <p>The Supplier will provide the following Event Materials: [...]</p> <p><i>Please list any goods or items (including intangible items) that the Supplier will provide or produce which will be owned by Kew; you can refer to an Annex, if used</i></p> <hr/> <p>The Supplier will provide the following Supplier Proprietary Materials: [...]</p> <p><i>List any goods or items that the Supplier owns but which Kew will be permitted to use for the duration of the Event. These could be pre-existing items that the Supplier intends to re-use for other projects (e.g. Supplier's own themed posters, Supplier customer survey...) or items that the Supplier creates for Kew but retains ownership of (e.g. props used for an event which will be dismantled and returned to the Supplier after the event, fabrication elements, music, choreography...).</i></p> |

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| | | <p>The following Supplier will provide the following Third Party Materials: [...]</p> <p><i>List any goods or items obtained or commissioned by the Supplier from third parties which cannot be assigned to Kew and any restrictions around them, e.g. supplier uses music composed by a third party and Kew is only allowed to use the track on-site but not online.</i></p> |
| 8. | Kew Materials | <p>Kew will provide the following Kew Materials: [...]</p> <p><i>list any goods, items, know-how and/or information that Kew owns or provides (and which may be licensed by Kew from a third party) which the Supplier is permitted to use as part of the Services such as images from our archives, scientific information or assets of third party licensed to Kew like the Beano, Gruffalo etc.</i></p> |
| 9. | Exclusivity | <p><i>Document here if any Deliverables will be provided to Kew on an exclusive basis and, if so, what the parameters of any exclusivity will be, for example:</i></p> <p>Exclusivity Period: [Before the Event for a period of x months and] during the Event dates [and for a period of [...] months thereafter].</p> <p>Exclusivity Scope: [...] <i>for example: geography / limitations on use in similar exhibitions or institutions etc</i></p> |
| 10. | Equipment loaned by Supplier to Kew | <p><i>List any Equipment that supplier is loaning to Kew such as fences & barriers, floor mats... As a general rule, the Supplier is required to provide all necessary equipment under Clause 2.10 (a).</i></p> |
| 11. | Equipment & assistance provided by Kew | <p>Subject to the Supplier complying with its obligations under the Agreement, Kew will loan the following Equipment to the Supplier:</p> <ul style="list-style-type: none"> [...] <p><i>For example: tools, appliances, utensils, hardware, Kew buggies, ladders, cables...</i></p> <p><i>As a general rule, the Supplier is required to provide all necessary equipment under Clause 2.10 (a). However, depending on the circumstances, Kew may provide some equipment, in which case this should be listed here Do not list things like "advice by Kew staff" – this fits under "Kew Materials" above.</i></p> <p>Kew will also provide:</p> <ul style="list-style-type: none"> [...] <p><i>For example: Power supply, Parking space, Crew assistance, ...</i></p> <p><i>List any further assistance or access to facilities that Kew is providing, if applicable.</i></p> |
| 12. | Supplier Personnel Requirements | <p>Supplier Personnel shall meet the following requirements:</p> <p>[•] <i>Insert any specific requirements that contactor personnel must meet e.g. minimum qualifications / certifications</i></p> |
| 13. | Key Personnel | <p>Name: [•]</p> <p>Role: [•]</p> <p><i>If applicable, list Key Personnel (ie. personnel providing important / unique individual contributions to the services). See cl. 2.12 for Supplier's obligations in respect of Key Personnel.</i></p> |
| 14. | Additional Documents to be provided by Supplier | <p>At least one month prior to the Installation Access Date(s), the Supplier shall provide all items listed in Clause 2.4 of the General Terms and Conditions as well as:</p> <ul style="list-style-type: none"> [Electrical Distribution Plan Food Hygiene Certification Electrical equipment list Electrical loadings PAT Testing certificates for any non-new appliances or equipment Fire Safety documentation Warranties or safety certificates for equipment Any requested proof of insurance Contractors Site Induction Record Sheet] <p>The Supplier is responsible for ensuring that risk assessments and method statements ("RAMS") are provided according to Clause 2.4 of the General Terms</p> |

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| | | and Conditions and are comprehensive and cover all relevant risks to staff and visitors and any other person who may be affected by their work. <i>Amend list as applicable. In particular, the Contractor Site Induction may also be completed on site or at shorter notice, in which case please delete. Note that Clause 2.4 requires method statements and risk assessments.</i> |
| 15. | Policies & Requirements | The Supplier shall have due regard to and comply with the following policies and requirements in so far as relevant to the Services: <ul style="list-style-type: none"> • Contractors Code • Contractors Site Induction • COVID-19 Contractor Guidance • Safeguarding Policy • Health and safety policy • Statutory Garden Regulations • The Kew Site Biosecurity Guidelines • Fraud, bribery and corruption policy • Whistle blowing policy • UK Government Timber Policy issued by DEFRA and available at Gov.uk • Data Processor Order (available at www.kew.org) • IT Policies • CITES provisions in the General Terms and Conditions • Sustainable and Ethical Sourcing provisions in the General Terms and Conditions <i>Amend list as applicable</i> |
| 16. | Sub-contractors | <i>Document any agreed sub-contractors including performing artists.</i> |

B. KEY DATES

| | | |
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| 17. | Approval Date | Designs, proofs, drafts, soundtracks, research, references (including specific references to support any facts or claims) and other similar items related to the Deliverables shall be submitted to Kew for approval by [such date(s) as agreed between the Parties separately in writing (which may include email)] / [insert date]. <i>Amend as applicable. Please do not state that Kew approves risk assessments and method statements which are submitted according to section 14 ("Additional documents to be provided by Supplier"). We do not approve these but our role is limited to checking that risk assessments cover the relevant issues and risks both to staff and visitors.</i> In the event of any disagreement over the correct final version of any Deliverables, the version that Kew last approved shall prevail. |
| 18. | Press Launch Date | [•] or [N/A] <i>Insert Press Launch Date, and any obligations of Supplier to support or take part, if applicable.</i> |
| 19. | Installation Access Date(s) | <ul style="list-style-type: none"> • During [Kew's normal hours of business] on [•] - [•]. <i>Insert applicable installation dates(s). Note that the Supplier is required to provide Kew with specified health and safety information no later than one month prior to the Installation Access Date(s) – see Clause 2.4 for further details.</i> |
| 20. | Event Date(s) | During [Kew's normal hours of business] on [•] - [•]. <i>Insert applicable event dates.</i> |
| 21. | Installation Clearance Date(s) | <ul style="list-style-type: none"> • During [Kew's normal hours of business] on [•] - [•]. <i>Insert applicable de-rig and final clearance date(s).</i> |

C. FEES & PAYMENT

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| 22. | Fees (exclusive of VAT) | £ [•], broken down in accordance with the following budget: [•] <i>Insert break down of costs / budget</i> [Kew acknowledges that fees stated for materials may be subject to change, but any increase in fees will require itemised billing and receipts and is at all times subject to Kew's approval] <i>Optional wording to be included where fees for materials may change.</i> |
| 23. | Payment Plan | The Supplier shall invoice Kew for the Fees [upon completion of the Services] / [in accordance with the payment Order outlined below:] |

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| | | If applicable, insert payment plan, for example: <ul style="list-style-type: none"> • 20% within 30 days of signing of this Agreement. • 40% on milestone a • 40% on milestone b |
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D. SPECIAL CONDITIONS

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| 24. | Amendments and / or additions to the General Terms & Conditions | [.] <i>Insert any agreed amendments to the Part 2. Eg. 'Clause x shall be deleted and replaced by the following...' and / or add any specific obligations that are agreed. Reminder : public liability insurance in General Terms and conditions is £5m. However, for higher risk arrangements, this may need to be increased, for example where Supplier undertaking activities such as installation. Speak to the Legal Team if in doubt.</i> |
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The parties each agree to the terms of this Agreement (which expression includes the Order in Part 1, the attached General Terms & Conditions in Part 2, and any documents attached as Annexes). Unless otherwise stated, where there is any inconsistency between the terms of this Agreement, the following order of priority shall apply to the extent of such inconsistency: 1) the Order in Part 1; 2) the General Terms and Conditions in Part 2; 3) the Annexes.

The Supplier hereby acknowledges receipt of the Contractor's Code and all applicable Policies & Requirements as specified above and accepts the terms thereof.

Signed by

(signature)

(print name)

For and on behalf of

**[THE BOARD OF TRUSTEES OF THE
ROYAL BOTANIC GARDENS, KEW /
RBG KEW ENTERPRISES LIMITED]**

DATE: _____

Signed by

(signature)

(print name)

For and on behalf of

[INSERT NAME OF SUPPLIER]

DATE: _____

PART 2: GENERAL TERMS & CONDITIONS

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

Affiliate: means any organisation that controls, is controlled by, or is under common control with a party where "control" refers to ownership of 50% or more of voting shares or interest or otherwise has the power to direct the affairs of such organisation.

Agreement: the agreement between Kew and the Supplier for the provision of the Services and Deliverables comprising the Order (Part 1), these General Terms & Conditions (Part 2), and any other documents expressly incorporated by reference.

Approval Date: the date by which the Deliverables must be submitted to Kew for approval, as stated in the Order.

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 Premises, as updated from time to time.

Deliverables: the Event Materials, Supplier Proprietary Materials (where applicable) and Third Party Materials (where applicable) as stated in the Order (and any Annex, if used).

Delivery Location: Such location within the Premises as stated in the Order.

Event: refers to the event described in the Order.

Event Materials: the out puts of the Services and all those Materials and Intellectual Property Rights provided by the Supplier for the purposes of the Services including those listed in the Order and including any Materials adapted, modified or derived from the Kew Materials but excluding Supplier Proprietary and Third Party Materials.

Fees: the fees payable for the Services and Deliverables as stated in the Order.

Installation Access Date(s): the date(s) stated in the Order on which the Supplier shall, subject to successful quarantine checks for the Deliverables (where applicable), be permitted access to the Delivery Location to carry out any installation work forming part of the Services.

Installation Clearance Date: the date(s) stated in the Order during which the Supplier shall have access to remove any infrastructure from the Premises and complete any other clearance work, if forming part of the Services.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, 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 rights, topography rights, performer's property rights (as described in the Copyright Designs and Patents Act 1988), rights in confidential information (including know-how and trade secrets) and any other intellectual property or proprietary 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 Materials: all Materials, and Intellectual Property Rights which are owned by or licensed to Kew which are provided to the Supplier by or on behalf of Kew, as stated in the Order.

Equipment: Any articles or items owned or hired by either Kew or Supplier or any of their subcontractors that are necessary to provide the Services, whether or not used at the Premises and which may, subject to Clause 2.9 be loaned by one party to the other, including but not limited to tools, appliances, utensils, hardware, Kew buggies and any such items specified in the Order but excluding any Materials.

Materials: all items including, but not limited to, objects, drawings, artwork, copy, models, designs, photographs, films, characters, music, sound recordings, performances, books, painting, logos, information, know-how drawings, specifications and data in any medium and whether or not protected by Intellectual Property Rights.

Premises: Kew's premises as stated in the Order including any stated Delivery Location.

"Relevant Requirements": as defined in Clause 3.6.

Services: the services to be provided by the Supplier under this Agreement, as set out in the Order (and any Annex, if used), including services which are incidental or ancillary to the Services.

Special Conditions: any special conditions stated in the Order.

Supplier Personnel: all employees, agents, consultants and contractors of the Supplier, or of any sub-contractor who will be involved in delivering the

Services including any individuals identified as "Key Personnel" in the Order.

Supplier Proprietary Materials: all Materials and Intellectual Property Rights owned by the Supplier and which are i) in existence prior to the date on which it is intended to use them for the provision of the Services, or ii) created by or for the Supplier outside the scope of Services and which are intended to be reused across its business, or iii) to be created by the Supplier as part of the Services but of which Supplier shall retain ownership and which are listed in the Order.

Third Party Materials: all Materials and Intellectual Property Rights owned by a third party which are licensed to, or commissioned by, the Supplier during the performance of the Services and incorporated into the Deliverables or which have been created by a Third Party and which are in existence at the time the Supplier wishes to make use of them as part of the Deliverables.

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;
- (e) references to "in writing" shall include email
- (f) references to "Supplier" shall include, where the context requires, any sub-contractors engaged by the Supplier; and
- (g) clause headings do not affect the interpretation of these General Terms & Conditions.

1.3 The terms of this Agreement shall apply to the provision of the Services and Deliverables to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which might otherwise be implied by trade, custom, practice or course of dealing.

2 SUPPLY OF SERVICES AND DELIVERABLES

2.1 The Supplier shall provide the Services and Deliverables to Kew in accordance with the terms of the Agreement and meet all the relevant dates for provision of the Services and Deliverables stated in the Order including installation during the Installation Access Date(s) and the de-rig and clearance by the last stated Installation Clearance Date if this forms part of the Services.

2.2 **Health and Safety, Policies, Documentation etc.:** When attending the Premises, the Supplier shall, and shall procure that the Supplier Personnel, at all times comply with:

- (a) the Contractor's Code and any other Policies & Requirements stated in the Order;
- (b) the reasonable instructions and requirements of Kew in all matters relating to the Services; and
- (c) all health & safety rules and regulations, including all relevant provisions of the Construction (Design and Management) Regulations 2015 and any other security requirements that apply at the Premises.

2.3 With the signed Agreement, the Supplier must provide Kew with:

- (a) Appendix 9 of Contractor's Code duly signed;
- (b) A completed RBG Kew Health & Safety Questionnaire; and
- (c) Any requested Insurance Certificates evidencing the insurance cover required by Clause 9 together with the receipts for the current year's premium in respect of each insurance policy.

2.4 No later than one month prior to the Installation Access Date(s) unless otherwise agreed in writing, the Supplier shall provide Kew with:

- (a) a written method statement outlining the proposed manner of delivery of the Services, and of the Deliverables to the Delivery Location;
- (b) all appropriate Risk Assessments;
- (c) a list of all natural materials being brought into the Premises together with a note of their provenance and any other information reasonably requested by Kew for the purposes of inspection, testing and quarantine;
- (d) a schedule which details of any Supplier Personnel who require access to the Premises, dates of access and their mobile numbers for contact on-site, and thereafter shall promptly notify Kew of any changes to such schedule;

- (e) the vehicle registration numbers of any Supplier vehicles requiring access to the Premises; and
- (f) any other documents detailed in the Order, failing which access to the Premises will not be permitted.

2.5 **Standards:** The Supplier shall ensure that the Services and / or the Deliverables (as appropriate) shall:

- (a) conform with the description details stated in the Order (and any Annex, if used);
- (b) are performed with the best care, skill and diligence, and in accordance with best practice applicable in the Supplier's industry, profession or trade;
- (c) utilise the best standards and techniques, be free from defects in workmanship, materials, installation and design and remain so for a minimum of 12 months from delivery;
- (d) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by Kew (including that set out in Clause 2.5(e)), and in this respect Kew also relies on the Supplier's skill and judgment;
- (e) be capable of being used as part of the daily operations of a popular public attraction which may include outdoor installation and Supplier warrants and represents that Deliverables shall be of sufficiently high quality and durability to withstand high levels of access and use by adults and children and exposure to all weathers and wild animals where relevant;
- (f) be delivered to the Delivery Location
- (i) on the Installation Access Date(s); or
- (ii) on such earlier date as agreed in writing to allow for inspection and testing under Clause 2.6(b); in a manner agreed with Kew, including transportation for the Deliverables.

2.6 Approvals, inspection, repairs etc.

- (a) The Supplier shall submit the designs, proofs, drafts, soundtracks, research, references (including specific references to support any facts or claims) and other similar items related to the Deliverables and/or Services to Kew for approval no later than the Approval Date(s);
- (b) Kew shall have the right to inspect the provision of the Services and inspect and test the Deliverables and any associated packing and transport materials (including checks by Kew's quarantine team) at any time before or upon delivery to the Delivery Location. The Supplier shall provide Kew with sufficient information in advance of the proposed delivery of the Deliverables to allow Kew to assess risk in this area.
- (c) If following such inspection or testing Kew considers that the Deliverables and/or Services do not, or are unlikely to, comply with the Agreement requirements, Kew shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance within 24 hours, or such longer period as agreed by Kew in writing.
- (d) Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Deliverables and/or Services, and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Agreement. Kew shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- (e) Notwithstanding Clause 2.5(c) if at any time after delivery of the Deliverables, any remedial action is required to correct any defects or faults in the design, materials or workmanship of the Deliverables, Kew shall notify the Supplier and the Supplier shall promptly carry out such work as necessary to ensure compliance with the Agreement.

2.7 **Cost Of Maintenance Or Replacement:** In the event of any failure to comply with Clauses 2.5(c), 2.5(d) or 2.5(e) the Supplier shall be responsible for all costs associated with maintaining and repairing any Deliverables including but not limited to maintaining a good aesthetic appearance and providing any replacement Deliverables (whether temporary or permanent) in the event that any Deliverables have to be removed from the premises. Kew shall determine in its sole opinion whether a Deliverable requires any form of maintenance, repair or replacement, acting reasonably at all times.

2.8 Title And Risk:

- (a) Title to the Event Materials shall pass to Kew on the earlier of payment or the completion of delivery of the Event Materials to the Delivery Location; and
- (b) Risk in the Deliverables shall pass to Kew on completion of delivery of the Deliverables in question to the Delivery Location.

PART 2: GENERAL TERMS & CONDITIONS

2.9 Equipment:

- (a) Any Equipment brought onto the Premises by the Supplier must only be used for the provision of the Services and/or Deliverables under this Agreement.
- (b) A Party to this Agreement may agree to loan any Equipment (whether owned by that Party or hired from a third Party) to the other Party. The Party who owns or has hired such Equipment from a third party for use at the Premises (hereafter for ease of reference referred to as the "Owner") shall:
 - (i) where relevant, retain ownership of the loaned Equipment at all times;
 - (ii) grant or procure the grant to the other Party (the "Borrower") of a non-exclusive right for the term of this Agreement to use the loaned Equipment in accordance with any instructions provided by the Owner for the purposes of this Agreement only; and remain responsible for transit (and insurance during transit), installation and deinstallation, calibration, support and maintenance of the loaned Equipment during the term of this Agreement and all costs arising from the same.
- (c) The Borrower of the loaned Equipment shall:
 - (i) take reasonable care of the loaned Equipment at all times and ensure it is stored safely and securely;
 - (ii) use the loaned Equipment in accordance with any instructions provided by the Owner;
 - (iii) maintain public liability insurance that covers the loaned Equipment at all times whilst in the Borrower's custody;
 - (iv) not be responsible for any depreciation in value or fair wear and tear arising from normal use, or for any loss or damage arising from any defect in the loaned Equipment not caused by any act or omission of the Borrower; and
 - (v) be liable for any loss or damage to the loaned Equipment whilst in the Borrower's custody and control, save for those matters set out in Clause 2.9(c)(iv).

2.10 General Obligations: The Supplier shall:

- (a) provide all necessary Equipment as required to provide the Services, whether or not at the Premises, unless it is otherwise stated in the Order that Kew will loan any Equipment to the Supplier;
- (b) 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 Deliverables;
- (c) hold Kew Materials in safe custody at its own risk, maintain them in good condition until returned to Kew, and not dispose of or use them other than in accordance with Kew's written authorisation;
- (d) 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 or invalidate any policy of insurance Kew has in place;
- (e) not interfere and shall ensure that all Supplier Personnel will not interfere, with the enjoyment of any visitors to the Premises;
- (f) not use the Kew Materials, Event Materials or Equipment loaned to the Supplier by Kew for any purpose not connected with this Agreement; and
- (g) implement any recommendations and requirements made by Kew to modify the provision of the Services as soon as reasonably practicable.

2.11 Supplier Personnel: The Supplier shall:

- (a) provide a sufficient number of Supplier Personnel to ensure that the Supplier meets its contractual obligations, and only use Supplier Personnel who satisfy any Supplier Personnel Requirements stated in the Order, and who are suitably skilled and experienced to perform tasks assigned to them;
- (b) ensure that Supplier Personnel shall, where appropriate, make themselves available for press and media coverage on the press launch date detailed in the Order, and at other mutually agreeable times;
- (c) ensure Supplier Personnel take any steps reasonably required by Kew to prevent unauthorised persons being admitted to the Premises (for example not sharing passes or not allowing tailgating into Premises); and
- (d) if Kew gives the Supplier notice that any member of Supplier Personnel is (i) not to be admitted to, or is to be removed from, the Premises or (ii) is not to become involved in or is to be removed from involvement in the performance of the Agreement, the Supplier shall take all reasonable steps to comply with such notice and procure that any pass issued to the relevant Supplier Personnel is surrendered and returned to Kew. If required by Kew, the Supplier shall replace any Supplier Personnel removed under this Clause with another suitably qualified person
- (e) be responsible for the observance by all Supplier Personnel of Clauses 2 and 3, and shall be directly

liable to Kew for any breach thereof by any Supplier Personnel.

2.12 Key Personnel: 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.
- (e) Kew shall not unreasonably withhold its agreement or approval under Clauses 2.12(b) or 2.12(c) but 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.

3 STATUTORY OBLIGATIONS AND OTHER REQUIREMENTS

3.1 In providing the Services and the Deliverables, the Supplier shall comply with all applicable current laws, statutes, regulations, codes of practice and sanctions, including those relating to data protection, health, safety, fire, food and the environment.

3.2 Safeguarding: The 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 Premises. The 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).

3.3 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. 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.

3.4 Modern Slavery: The 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; or
- (c) human trafficking, all as defined within the Modern Slavery Act 2015.

3.5 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 3.5 by the Supplier and Supplier Personnel. The Supplier shall provide such supporting evidence of compliance as Kew may reasonably request.

3.6 Prevention of Bribery: The Supplier shall:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

(c) have and shall maintain in place throughout the term of this agreement its own policies and procedures to ensure compliance with the Relevant Requirements, and will enforce them where appropriate

(d) notify Kew (in writing) if it becomes aware of any breach of Clauses 3.6(a) or 3.6(b), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with the performance of this agreement

3.7 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 of this Agreement.

3.8 Sustainable and Ethical Sourcing: The Supplier acknowledges and agrees that 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 Deliverables is sustainable and ethical, and in accordance with all laws and regulations including, but not limited to the DEFRA Timber Procurement Policy. The Supplier agrees that the supply of 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.

3.9 CITES: Where the Deliverables (or any of the materials which the Supplier intends to bring onto the Premises) consist of or contain plant and/or fungi materials derived from species listed in the 1975 Convention on International Trade in Endangered Species (CITES) such plant and/or fungi material shall be compliant with CITES and national laws and regulations and relevant EU regulations when dealing with Northern Ireland for implementing CITES. The Supplier must shall, on request, provide Kew with copies of any certificates, permits, documents or other information relating to the Deliverables that Kew may reasonably require and that demonstrate compliance with CITES.

4 KEW REMEDIES

4.1 If the Supplier fails to provide the Services and Deliverables in accordance with the relevant dates stated in the Order, and any other timelines subsequently agreed between the parties, Kew shall, without limiting its other rights or remedies, be entitled to:

- (a) **terminate** the Agreement with immediate effect by giving written notice to the Supplier;
- (b) **refuse** to accept any subsequent performance of the Services and delivery of the Deliverables which the Supplier attempts to make;
- (c) have **refunded** all sums paid in advance by Kew for Services and Deliverables that have not been provided by the Supplier; and / or
- (d) 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, including any costs incurred by Kew in obtaining substitute services from a third party at late notice.

4.2 The Agreement shall extend to any substituted or remedial services provided by the Supplier.

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

5 KEW'S OBLIGATIONS

5.1 Subject to the Supplier complying with its obligations under the Agreement, Kew shall provide the Supplier with:

- (a) access at reasonable times to the Premises for the purpose of providing the Services; and
- (b) such other facilities and information as the Supplier may reasonably request to assist with the provision of the Services and which Kew considers reasonably necessary for the provision of the Services.

6 FEES AND PAYMENT

6.1 Kew shall pay to the Supplier the Fees. Unless otherwise agreed in writing by Kew, the Fees set out in the Order shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the provision of the Services and Deliverables. The Supplier shall pass through all

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costs and expenses to Kew with no mark-up.

- 6.2** All sums referred to in this Agreement are exclusive of VAT which shall be payable at the rate and in the manner from time to time prescribed by law.
- 6.3** The Supplier shall submit invoices to Kew in accordance with the Payment Plan stated in the Order, or as subsequently agreed in writing by Kew and the Supplier. Each invoice shall be a valid VAT invoice and include sufficient detail to determine what each invoice covers, including separate lines for costs and expenses and the Supplier agrees to provide such supporting information required by Kew to verify the accuracy of the invoice, including but not limited to the relevant agreement number.
- 6.4** Kew shall pay the invoiced amounts within 30 days from the date on which Kew has determined that the invoice is valid and undisputed.
- 6.5** Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- (a) provisions having the same effect as Clauses 6.3 and 6.4 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 6.3 and 6.4 of this Agreement.
- 6.6** 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.
- 6.7** If either party fails to pay any amount properly due and payable by it under the Agreement, the other party shall be entitled to charge interest on the overdue amount at the rate of 3% per annum above the Lloyds Bank base rate for the time being, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 6.8** 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.
- 7 INTELLECTUAL PROPERTY RIGHTS**
- 7.1 Kew Materials:** The Supplier acknowledges and agrees that ownership of Kew Materials and ownership of any Intellectual Property Rights in any Kew Materials (including any modifications or adaptations of Kew Materials produced in the course of providing the Services and Deliverables) shall remain vested in Kew and its licensors. Kew hereby grants to the Supplier a non-exclusive licence during the term of this Agreement to use the Kew Materials solely for the purposes of providing the Services and Deliverables.
- 7.2** Kew reserves the right to
- (a) use any images and/or videos (including producing new images and/or videos) in relation to the Services and the Deliverables for its own purposes, including but not limited to marketing and fundraising, and
 - (b) sub-licence the rights to any images and/or videos in relation to the Services and Deliverables to its subcontractors and other third parties.
- 7.3** Kew warrants that the Kew Materials shall not infringe any third party Intellectual Property Rights.
- 7.4 Event Materials:** The Supplier assigns to Kew, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the Event Materials.
- 7.5 Supplier Proprietary Materials:** The Supplier hereby grants to Kew a worldwide, royalty-free licence to use any Supplier Proprietary Materials provided to Kew or otherwise incorporated into the Deliverables for Kew to use in accordance with the terms of this Agreement which shall include the right to sub-licence to Kew's Affiliate and any third party sub-contractors or partners. Such licence shall be non-exclusive and irrevocable unless otherwise agreed and stated in the Order.
- 7.6 Third Party Materials:** Prior to delivery of the Deliverables, the Supplier shall obtain such licences or consents in respect of any Third Party Materials as necessary to enable Kew to use those Third Party Materials in accordance with the terms of this Agreement (including, without limitation, for the purposes set out in Clause 7.2). The Supplier shall notify Kew of any restrictions on usage prior to incorporation into the Deliverables to enable Kew to decide and provide written approval as to whether such restrictions are appropriate and acceptable, or not.

7.7 The Supplier shall obtain waivers of all moral rights in all the Deliverables (excluding any Kew Materials used in connection with 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.

7.8 The Supplier shall, promptly at Kew's request, do (or procure to be done) all such further acts and things, including 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 rights, title and interest in and to the Intellectual Property Rights assigned or licensed to Kew in accordance with this Clause 7.

7.9 The Supplier warrants that the receipt, use and onward supply of the Services and the Deliverables (excluding the Kew Materials) by Kew and its sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party.

7.10 Exclusivity: The Parties may agree a period of exclusivity which, if relevant, shall be stated in the Order to ensure that the Deliverables are not used in any other event within a certain period of time and / or geographical location. However, the Parties agree that the broad details of any exclusivity shall not affect the underlying position in respect of intellectual property ownership and rights set out in this Clause 7.

8 LIMITATION OF LIABILITY

8.1 Scope of this Clause: References to liability in this Clause 8 include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.2 No limitations in respect of deliberate default: Neither Party may benefit from the limitations and exclusions set out in this Clause in respect of any liability arising from its deliberate default.

8.3 Liability under identified clauses and strict liability: Nothing in this Agreement shall limit any liability under Clauses 3.4 (Modern Slavery), 3.6 (Prevention of Bribery) and 7.9 (Intellectual Property Rights) of this agreement and where legislation or regulations impose strict liability on the Parties, including but not limited to health and safety and product liability.

8.4 Liabilities which cannot legally be limited: Nothing in this Agreement limits any liability which cannot be legally limited, including but not limited to liability for:

- (a) Death or personal injury caused by negligence;
- (b) Fraud or fraudulent misrepresentation; and
- (c) Breach of the terms implied by section 12 of the Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8.5 Cap on the Supplier's liability: Subject to Clause 8.2 (no limitations in respect of deliberate default), Clause 8.3 (liability under identified clauses and strict liability) and Clause 8.4 (liabilities which cannot legally be limited) the Supplier's total liability to Kew:

- (a) for loss of or damage to property caused by the negligence of its employees and agents in connection with this agreement shall not exceed £5m for any one event or series of connected events;
- (b) for loss or damage arising out of or in connection with professional negligence of the Supplier shall not exceed £2m for any one event or series of connected events;
- (c) or all other loss or damage which does not fall within sub-clause (a) or (b) shall not exceed three hundred per cent (300%) of the Fees.

8.6 Cap on Kew's liability: Subject to Clause 8.2 (no limitations in respect of deliberate default), Clause 8.3 (liability under identified clauses and strict liability) and Clause 8.4 (liabilities which cannot legally be limited) Kew's total liability to the Supplier shall not exceed the Fees.

8.7 Payment reducing the caps: The caps on the Parties' liabilities shall not be reduced by payment of an uncapped liability.

8.8 Specific heads of excluded loss and exceptions from them:

- (a) Subject to Clause 8.2 (no limitations in respect of deliberate default), Clause 8.3 (liability under identified clauses and strict liability) and Clause 8.4 (liabilities which cannot legally be limited), Clause 8.8(c) identifies the kinds of loss that are not

excluded. Subject to that, Clause 8.8(b) excludes specified types of loss.

- (b) Indirect and consequential loss shall be wholly excluded

(c) **Types of loss and specific losses not excluded:**

- (i) Sums paid by Kew to the Supplier pursuant to this agreement, in respect of any Services or Deliverables not provided in accordance with this agreement.
- (ii) Wasted expenditure.
- (iii) Additional costs of procuring and implementing replacements for, or alternatives to, Services or Deliverables not provided in accordance with this agreement.
- (iv) Any additional operational and/or administrative costs and expenses incurred by Kew.

9 INSURANCE

9.1 Unless otherwise specified in the Order, 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.

9.2 This Clause 9 shall survive termination of the Agreement.

10 CONFIDENTIALITY

10.1 Subject to Clause 10.3, 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 (together "**Confidential Information**"). 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 personnel are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This Clause 10 shall survive the Agreement for a period of five (5) years from the date of termination or expiry if the Agreement.

10.2 The Supplier acknowledges that Kew is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIR**) together with any subordinate legislation, or guidance and/or codes of practice issued by the Information Commissioner or the relevant government department in relation to such legislation and regulations.

10.3 The Supplier acknowledges that Kew may be obliged to disclose information in accordance with the FOIA and EIR. Where relevant, Kew shall make reasonable efforts to inform the Supplier and consult in respect of any proposed disclosure relating to this Agreement and the provision of Deliverables and/or Services by the Supplier under this Agreement. The Supplier shall assist and cooperate with Kew to enable it to comply with its information disclosure obligations under the same.

11 TERMINATION

11.1 Termination for Cause: Without limiting its other rights or remedies, either Party may terminate the Agreement with immediate effect by giving written notice to the other Party 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 (or such other timeframe as determined by the Party giving notice, at all times acting reasonably and taking into account the circumstances of the breach);
- (b) the other Party goes into liquidation whether compulsory or voluntary or is declared insolvent or if an administrator or receiver is appointed over the whole or any part of that Party's assets or if the Party enters into any arrangement for the benefit of or compounds with its creditors generally or suspends or ceases to carry on all or a substantial part of its business or threatens to do any of these things;

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- (c) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 11.1(b);
- (d) 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
- (e) the Party giving notice 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.

11.2 Termination without Cause: Without limiting its other rights or remedies, Kew may terminate the Agreement by giving the Supplier one week's written notice; in which case Kew shall reimburse the Supplier for Services properly performed and Deliverables provided as at the date of termination and costs and expenses that are non-cancellable or cannot be mitigated.

11.3 On termination under Clause 11.2 and 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 the Services delivered and fees, costs and expenses payable under Clause 11.2 as at the date of termination, any such excess shall be promptly refunded to Kew by the Supplier.

12 CONSEQUENCES OF TERMINATION

12.1 On termination of the Agreement for any reason:

- (a) Kew shall return any Supplier Proprietary Materials and any loaned Equipment provided by the Supplier;
- (b) The Supplier shall immediately deliver to Kew all Event Materials, whether or not then complete, and return all Kew Materials and any loaned Equipment provided by Kew. 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 this Agreement;
- (c) The accrued rights, remedies, obligations and liabilities 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
- (d) Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13 GENERAL

13.1 Publicity, trade marks and reputation:

- (a) The Supplier may not without the prior written consent of Kew: (i) refer to Kew or their engagement under this Agreement in any advertisement or publicity; or (ii) use Kew's logo(s) or trade mark(s) on any materials including the Deliverables. On expiry or termination, Supplier shall cease to use all Kew logo(s) and trade mark(s) on the same shall be removed from the Deliverables, other than the Event Materials.
- (b) In providing the Services and carrying out its obligations under this Agreement, the Supplier will, and shall ensure that all Supplier Personnel will, not bring Kew, its name or logos into disrepute in any way.

13.2 Force majeure:

- (a) 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**).
- (b) A party prevented or delayed from performing its obligations under this Agreement by a Force Majeure Event shall promptly notify the other party in writing and make every reasonable effort to minimise the effects thereof and shall promptly resume performance as soon as reasonably possible after the respective event ceases.
- (c) If a Force Majeure Event prevents the Supplier from supplying the Services, Kew shall have the right, without limiting its other rights or remedies, to terminate this Agreement with immediate effect by giving written notice to the Supplier.
- (d) In exceptional circumstances, Kew may close the whole or part of the Premises to the public and cancel or postpone the Event (i) where there is or is a reasonable expectation of a Force Majeure Event including adverse weather or an outbreak of pests or disease and (ii) 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.

13.3 Audit:

- (a) The Supplier shall keep and maintain until 6 years after the Agreement has expired or been terminated, or as long a period as may be agreed between the parties, full and accurate records of the Agreement including the 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.

13.4 Assignment and subcontracting:

- (a) Except as stated within 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.
- (b) If seeking permission from Kew to use a sub-contractor, the Supplier shall provide proof that the sub-contractor is suitably skilled and experienced to undertake the tasks which the Supplier wishes to sub-contract to them.
- (c) 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).
- (d) 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.

13.5 Notices: Any notice required to be given by one party to the other under, or in connection with, this Agreement shall be in writing, signed by or on behalf of the Party giving it and sent to the other party's Representative at the email address set out for that party in the Order. Any notice so served shall be deemed to have been duly given on day of transmission if within normal working days and hours (excluding bank holidays), or otherwise on the following working day in the UK.

13.6 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.

13.7 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.

13.8 No partnership: Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between 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.

13.9 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.

13.10 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).

13.11 Variation: Any variation, including any additional terms and conditions, to the Agreement shall only be binding when agreed in writing and signed by both parties.

13.12 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 Supplier seeks to impose or incorporate, or which might otherwise be implied by trade, custom, practice or course of dealing.

13.13 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 email (such as in PDF) will take effect as the delivery of an executed original counterpart of this Agreement.

13.14 Electronic signatures: the Parties agree that any signed version of this Agreement or amendment may be made by an agreed form of electronic signature which is conclusive of the intention of the Parties to be bound by those terms.

13.15 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 in 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.

13.16 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.

Annex 1 : Framework Specification

[please either describe the required Services and Deliverables or, at a minimum, insert the following documents :]

- 1. Specification or any equivalent docs from ITT such as the Statement of Requirements;**
- 2. Supplier Technical Response;**
- 3. [Other Supplier policies / procedures / standards as relevant]**

Annex 2: Charges

[Drafting note: Insert any other Annexes]