

OnGen Limited – Terms & Conditions

1. INTERPRETATION

- 1.1. The following definitions apply to these Terms and Conditions.
- Affiliate:** means in relation to either party, any company which is for the time being a holding company of that party or a subsidiary of that party or of any such holding company.
- Agreement:** means these Terms and Conditions and the Order between OnGen Limited and the Company for the supply of Services in accordance with Condition 2.
- Commencement Date:** means the term of this Agreement as provided for in Condition 2.
- Company:** means the Company identified in the Order.
- Customer:** means individuals to whom the Company sells or otherwise makes the Services available via the Microsite.
- Customer Account:** the account set up under this Agreement to enable a Customer to make use of the Services.
- Customer Data:** means the data inputted by a Customer or the Company on the Customer's behalf in relation to the use of the Services.
- Business Day:** a day other than a Saturday, Sunday or public holiday in Scotland when banks in Scotland are open for business.
- Data Protection Legislation:** means the Data Protection Act 2018, GDPR (unless and until the GDPR is no longer directly applicable in the UK), and any regulations and secondary legislation in the area of data protection, all as amended or updated from time to time.
- Documentation:** the document made available to the Company by OnGen online via the Microsite or such other web address notified by OnGen to the Company from time to time and the user instructions for the Services.
- GDPR:** means the General Data Protection Regulation ((EU) 2016/679).
- Fees:** means the fees payable by the Company to OnGen for the provision of the Services under this Agreement as set out in the Order.
- Intellectual Property Rights:** all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world.
- Microsite:** means the secure website as defined in the Order controlled by OnGen via which the Company can make the Services available to Customers.
- Normal Business Hours:** 9.00 am to 5.30 pm local UK time, each Business Day.
- Order:** means the applicable Order document field setting out the details of the Services to be provided under the Agreement, as set out on OnGen's webpage.
- Personal Data:** has the meaning given to that term in the Data Protection Legislation.
- Results:** means the results and data produced from the Customer's use of the Services.
- Services:** means the services to be provided by OnGen under the Contract as set out in the applicable Order(s) and the OnGen Expert services as more fully described in the Documentation.
- Software:** the online software applications provided by OnGen as part of the Services.
- Term:** means the term of this Agreement as described in Condition 3.
- Territory:** means the Territory defined in the Order.

2. BASIS OF AGREEMENT

- 2.1. The Order constitutes an offer by the Company to purchase Services from OnGen in accordance with these Terms and Conditions.
- 2.2. The Order shall be deemed to be accepted on the earlier of (i) OnGen issuing written acceptance of the Order; or (ii) any act by OnGen consistent with fulfilling the Order, at which point and on

which date the Agreement shall come into existence (**Commencement Date**).

3. COMMENCEMENT AND DURATION

- 3.1. This Agreement shall be effective from the Commencement Date and unless terminated earlier in accordance with its terms shall continue for a period of 1 year ("**Initial Period**") and thereafter automatically renew for successive periods of one year (each a "**Renewal Period**"), until either party notifies the other in writing, at least 2 months before the end of the Initial Period or Renewal Period, in which case the Agreement shall terminate upon the expiry of the Initial Term or applicable Renewal Period.

4. LICENCE

- 4.1. In consideration of the obligations accepted under this Agreement, OnGen grants to the Company a non-exclusive licence for the Term to promote and provide the Services via the Microsite to its Customers within the Territory in accordance with the terms of this Agreement.

5. SERVICES

- 5.1. OnGen shall, during the Term, develop, host and provide the Services and make available the Documentation to the Company on and subject to the terms of this Agreement.
- 5.2. The Services will be provided as a 'white labelled' service on the Microsite under the Company brand or such other branding as agreed between the parties. OnGen shall comply with the Company's reasonable requests in relation to the manner of feature of the Company's name and logo in the Services. The following credit shall appear on the Microsite: "Provided under licence from OnGen Limited" or such other credit as parties may agree. The Company shall also use the term "Powered by OnGen" where appropriate in relation to the marketing of the Services, or any product which utilises the Services.
- 5.3. OnGen shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for any necessary maintenance. OnGen shall endeavour to have such maintenance carried out at times when minimum disruption is likely to be caused, and shall provide advance notice of all maintenance periods to the extent this is reasonably practicable.
- 5.4. The Company shall not access, store, distribute or transmit any computer viruses, or any material during the course of its use of the Services that:
- (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (ii) facilitates illegal activity; or
 - (iii) in a manner that is otherwise illegal or causes damage or injury to any person or property;
- and OnGen reserves the right, without liability or prejudice to its other rights to the Company, to disable the Company's access to any material that breaches the provisions of this Condition.

6. CUSTOMER USE OF SERVICES

- 6.1. Subject to restrictions set out in this Condition 6 and the other terms and conditions of this Agreement, OnGen now grants to the Company a non-exclusive, non-transferable right to permit each Customer to use the Services and the Documentation during the Term solely for that Customer's personal use.
- 6.2. A Customer Account shall be set up for each Customer. OnGen shall provide guidance in relation to the setting up of Customer Accounts but otherwise the responsibility for setting up Customer Accounts lies with the Company. If any consultancy services are required from OnGen in relation to training or configuration work on Customer Accounts, this shall be charged at OnGen's then current rate.

7. CUSTOMER DATA

- 7.1. As between OnGen and the Company, the Company shall own all right, title and interest in and to all of the Customer Data and shall (save as expressly stated otherwise in this Agreement) have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. OnGen will provide for all Customer Data (and any information derived from it) to be accessible by the Company on demand and via an interface or route to be reasonably specified by the Company. Subject to Condition 7.2, OnGen do not monitor any Customer Data posted or provided by the Customer as part of the Services.
- 7.2. Notwithstanding Condition 7.1 above, OnGen shall have the right to perform statistical analysis of the Customer Data and Results for the creation of anonymised statistical data. Such anonymised data shall belong to OnGen and may be licensed to third parties. The Company warrants that the terms under which Customers are entitled to use the Services will include this right of use of Customer Data for OnGen.
- 7.3. OnGen shall, in providing the Services, comply with its privacy policy relating to the privacy and security of the Customer Data.
- 7.4. The Company is the controller and OnGen is the processor of any Personal Data which OnGen processes on behalf of the Company for the purposes of providing the Services.
- 7.5. Unless otherwise required or permitted by law, OnGen shall only process Personal Data for the duration of this Agreement or until otherwise instructed by the Company in accordance with Condition 7.8.
- 7.6. The categories of data subjects will be the Company's end users and OnGen may process the following types of Personal Data on behalf of the Company: user IDs, birth year, names, IP addresses, device IDs, email addresses and contact details and any other information that the Company or end users provide from time to time.
- 7.7. OnGen shall:
- (i) except as required by law, process the Personal Data only in accordance with the Company's documented reasonable instructions from time to time, for the purposes of providing the Services and for no other purpose;
 - (ii) implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk of the processing the Personal Data as required under Article 32 of the GDPR;
 - (iii) ensure that persons authorised by OnGen to process the Personal Data are under appropriate confidentiality obligations in respect of the Personal Data;
 - (iv) at the Company's cost, provide reasonable assistance on request to the Company in complying with the rights of data subjects and with the Company's statutory obligations relating to data security, data protection impact assessments and related prior consultation procedures taking into account the nature of processing and the information available to OnGen;
 - (v) notify the Company in writing as soon as possible, and in any event within 24 hours, of becoming aware of any breach of security which results in any unauthorised disclosure, loss of, or damage to, any personal data.
 - (vi) save only to the extent required by law, after expiry or termination of this Agreement and at the Company's cost, return to the Company or destroy, at the request of the Company, all Personal Data in the possession or control of OnGen;
 - (vii) at the Company's cost, make available to the Company such information as is reasonably necessary to demonstrate OnGen's compliance with this Condition 7;
 - (viii) at the Company's cost, allow the Company to appoint an independent auditor to audit and inspect OnGen's compliance with this Condition 7. Such audit may occur once per calendar year, unless the Company can demonstrate that it has genuine suspicion that OnGen has breached its obligations in this Condition 7. Such an audit shall be carried out during business hours and the Company shall provide at least 30 Business Days' notice of any such audit, unless the Company can demonstrate that it has genuine suspicion that OnGen has breached its obligations in this Condition 7 in which case the Company shall provide at least 3 Business Days' notice of any such audit;
- (ix) not transfer the Personal Data to a country outside the European Union without the authorisation of the Company unless the relevant territory ensures an adequate level of protection; and
- (x) not transfer personal data to a third party OnGen has engaged with in relation to any element of the Services without the consent of the Company, and for the purposes of this Condition and Article 28.2 of GDPR, the Company acknowledges and agrees that OnGen is authorised to disclose personal data to third parties in relation to Amazon Web Services to the extent necessary for the performance of the Services on condition that any such transfer and engagement will be in accordance with Data Protection Laws.
- 7.8. In relation to any third party processor outside of the European Union referenced in Condition 7.7(ix) above, or where the Company requests OnGen to transfer the Personal Data outside the European Union, the Company shall ensure that appropriate safeguards are in place to permit the transfer of the Personal Data outside the European Union and that the appropriate data subjects have been properly informed of the proposed transfer.
- 7.9. If requested by OnGen, the Company shall provide OnGen with such evidence as OnGen requests to demonstrate that any documented instructions given by the Company are in compliance with the Data Protection Laws, including but not limited to circumstances where the Company instructs OnGen to transfer the Personal Data outside the European Union.
- 7.10. OnGen shall not authorise a third party (subcontractor) to process Personal Data without the prior written permission of the Company (not to be unreasonably withheld or delayed). If such permission is granted, the subcontractor's contract must incorporate terms which are substantially the same as those set out in this Condition 7.
- 7.11. In the event of any loss or damage to Customer Data, the Company's sole and exclusive remedy shall be for OnGen to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up under OnGen's archiving procedure. OnGen shall not be responsible for any loss, damage or disclosure of Customer Data caused by any third party.
- 7.12. The Company warrants that it shall only use the Customer Data of a Customer for purposes authorised by that Customer (whether by way of terms and conditions on Customer sign-in to the Microsite or otherwise).
- 7.13. Conditions 7.1 and 7.7 shall survive the expiry or termination of this Agreement.
- 8. OBLIGATIONS**
- 8.1. The Company shall:
- (i) use all reasonable endeavours to promote the Services being available on the Microsite;
 - (ii) provide OnGen with all necessary co-operation and access to such information as may be reasonably required by OnGen in order to provide the Services;
 - (iii) ensure that its network and systems comply with the relevant specifications provided by OnGen from time to time; and
 - (iv) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the OnGen's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

- 8.2. The Company shall ensure that Customers are required to accept terms and conditions for use of the Services which are at least as protective of OnGen rights as the terms of this Agreement.
- 8.3. The Company may not during the Term use any confidential information provided by OnGen to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- 8.4. All marketing materials to be used by the Company in relation to the promotion of the availability of the Services on the Microsite must reference OnGen in a manner agreed in advance with OnGen.
- 8.5. Each party shall:
- (i) comply with all applicable laws and regulations with respect to its activities under this Agreement; and
 - (ii) carry out all its responsibilities set out in this Agreement in a timely and efficient manner.
- 9. PAYMENT**
- 9.1. The Company shall pay the Fees to the OnGen in accordance with this Condition 9 and the Order. These include fees payable in relation to the number of Customers who access the Services via the Microsite.
- 9.2. Except where this Agreement states otherwise, the Company shall pay each undisputed invoice within 14 days after the date of such invoice.
- 9.3. If OnGen has not received payment of an undisputed invoice within 30 days after the due date, and without prejudice to any other rights and remedies of OnGen:
- (i) OnGen may disable the Company's access to all or part of the Services and OnGen shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (ii) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.4. All amounts and fees stated or referred to in this Agreement:
- (i) shall be payable in pounds sterling;
 - (ii) are non-cancellable and non-refundable; and
 - (iii) are exclusive of value added tax, which shall be added to OnGen's invoice(s) at the appropriate rate.
- 9.5. OnGen shall be entitled to increase the Fees but such increase shall be on no more than once in any 12 month period, which may only take effect on an anniversary of the Commencement Date and must be notified to the Company with at least 4 months' notice prior to the end of the Initial Period or the relevant Renewal Period.
- 10. INTELLECTUAL PROPERTY**
- 10.1. Subject to Condition 10.3, the Company acknowledges and agrees that OnGen and/or its licensors own all Intellectual Property Rights in the Services and the Documentation. Unless expressly stated otherwise in this Agreement, OnGen does not grant the Company any rights to, or in, the Intellectual Property Rights in the Services or the Documentation.
- 10.2. OnGen confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under this Agreement.
- 10.3. In the event that the parties agree terms on which OnGen shall undertake development work, where such development work may create Intellectual Property Rights the ownership of such Intellectual Property Rights shall vest in OnGen unless otherwise set out in writing between the parties prior to such development work taking place.
- 10.4. The Company shall not:
- (i) reverse engineer, disassemble, decompile or otherwise attempt to derive source code from any Software;
 - (ii) make or try to make any Software available to third parties;
 - (iii) modify, adapt, translate or create derivative works based on the Software;
 - (iv) reproduce any portion of any Software; or
 - (v) permit or authorise any party to do any of the foregoing.
- 11. CONFIDENTIALITY AND PUBLICITY**
- 11.1. Each party shall, during the term of this licence and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this licence) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including, without limitation, trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this licence, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.
- 11.2. The terms of this Agreement are confidential and may not be disclosed by the Company without the prior written consent of OnGen.
- 12. INDEMNITY**
- 12.1. The Company shall defend, indemnify and hold harmless OnGen against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Company or the Customer's use of the Services and/or Documentation, provided that:
- (i) the Company is given prompt notice of any such claim;
 - (ii) OnGen provides reasonable co-operation to the Company in the defence and settlement of such claim, at the Company's expense; and
 - (iii) the Company is given sole authority to defend or settle the claim.
- 12.2. OnGen shall defend the Company, its officers, directors and employees against any claim that the Services or Documentation infringes any Intellectual Property Rights, and shall indemnify the Company for any amounts awarded against the Company in judgment or settlement of such claims, provided that:
- (i) OnGen is given prompt notice of any such claim;
 - (ii) the Company provides reasonable co-operation to OnGen in the defence and settlement of such claim, at OnGen's expense; and
 - (iii) OnGen is given sole authority to defend or settle the claim.
- 12.3. In the defence or settlement of any claim, OnGen may procure the right for the Company to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Company without any additional liability or obligation to pay liquidated damages or other additional costs to the Company but, for the avoidance of doubt, without prejudice to the indemnity set out in this Condition 12.
- 12.4. In no event shall OnGen, its employees, agents and sub-contractors be liable to the Company (or Customer) to the extent that the alleged infringement is based on:
- (i) a modification of the Services or Documentation by anyone other than OnGen or authorised by it; or
 - (ii) the Company or Customer's use of the Services or Documentation in a manner contrary to the instructions given by OnGen; or
 - (iii) the Company or Customer's use of the Services or Documentation after notice of the alleged or actual infringement from OnGen or any appropriate authority.

- 12.5. The Company, at its own expense, will defend or at its option settle, any claim or proceeding brought against OnGen by a third party and pay any liabilities, damages and costs awarded in any such proceeding if the proceeding is based on:
- (i) an allegation of infringement of any Intellectual Property Rights of any third-party to the extent attributable to any content contributed to the Services by or on behalf of the Company;
 - (ii) any use, sale, license, distribution or disclosure by the Company, or any of its employees of any Customer Data or other Customer related information, whether or not in breach of any confidentiality, security, or privacy obligations; or
 - (iii) the failure of the Company to comply with all applicable laws, rules and regulations in connection with the Services, including use of any Customer Data;
- provided that OnGen provides the Company with (i) prompt written notice of such claim; (ii) exclusive control over the defence and settlement of such claim; and (iii) proper and full information and assistance to settle or defend any such claim.
- 12.6. Condition 12 and 13 state the Company's sole and exclusive rights and remedies, and OnGen's entire obligations and liability, for infringement of any Intellectual Property Right or right of confidentiality.

13. LIABILITY

- 13.1. This Condition 13 sets out the entire financial liability of OnGen (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Company:
- (i) arising under or in connection with this Agreement;
 - (ii) in respect of any use made by the Company or Customer of the Services and Documentation or any part of them; and
 - (iii) in respect of any representation, statement or delictual act or omission (including negligence) arising under or in connection with this Agreement.
- 13.2. Except as expressly and specifically provided in this Agreement:
- (i) the Company and its Customers assume sole responsibility for Results obtained from the use of the Services and the Documentation by them, and for conclusions drawn from such use. Use of the Services does not guarantee the Customer any savings on energy costs, or any particular return on investment or generation output;
 - (ii) OnGen shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to OnGen by the Company or a Customer in connection with the Services, or any actions taken by OnGen at the Company's or Customer's direction;
 - (iii) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement;
 - (iv) the Services and the Documentation are provided to the Customer on an "as is" basis.
- 13.3. The Services are not intended to replace direct consultative advice as provided by a specialist in the energy sector, and all Results are for the Customer's information and guidance only. The Company acknowledges that any Results are reliant on the Customer Data and any third party data used to provide the Services. While OnGen takes care to use reputable sources for its third party data it is not responsible or liable for any errors that may be contained in such data. Nor shall OnGen shall be liable for any loss, claim or damage arising out of any reliance placed on any Results.
- 13.4. Where information on potential funding providers is provided as part of the Results or in relation to the Services generally, this is for information purposes only. OnGen do not warrant that the Customer will necessarily be able to obtain funding from any such funding provider.
- 13.5. Where information on potential suppliers of renewable energy is provided as part of the Results or the Services generally, this is

- for information purposes only. OnGen does not warrant the performance of any services provided by such a supplier to a Customer and OnGen shall not be liable for any loss, claim or damage suffered by a Customer in relation to any such services.
- 13.6. Nothing in this Agreement excludes the liability of OnGen:
- (i) for death or personal injury caused by the OnGen's negligence; or
 - (ii) for fraud or fraudulent misrepresentation.
- 13.7. Subject to Condition 13.6:
- (i) OnGen shall not be liable whether in delict (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
 - (ii) OnGen's total aggregate liability in contract (including in respect of the indemnity at Condition 12.2 delict (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited the total Fees paid under the Agreement prior to such liabilities arising.

14. TERMINATION

- 14.1. Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, or any express rights of termination stated elsewhere in this Agreement either party may at any time terminate this Agreement with immediate effect by giving written notice to the other party if:
- (i) the other party fails to pay any undisputed amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - (ii) the other party commits a material breach of any term of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - (iii) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
 - (iv) 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;
 - (v) 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 a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (vi) 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 that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (vii) 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);

- (viii) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (ix) 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;
 - (x) the other party (being an individual) is the subject of a bankruptcy petition or order;
 - (xi) 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;
 - (xii) 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 Condition 14.1(iv) to clause 14.1(x) (inclusive); or
 - (xiii) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 14.2. Termination by either party in accordance with the rights contained in this Condition 14 shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 14.3. On expiry of this Agreement or on its termination for any reason:
- (i) all licences granted under this Agreement shall immediately terminate;
 - (ii) OnGen shall transfer to the Company all of the Company Data in a standard file format to be reasonable agreed between the parties. Once this has been done, the Company's right to receive Customer Data from OnGen shall terminate;
 - (iii) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party and all materials containing confidential information of the other party shall be, at the order of that other party, returned or destroyed;
 - (iv) OnGen shall not be contractually restricted from providing the Services directly to Customers via its own website save that it shall not use any confidential information of the Company for this purpose; and
 - (v) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 14.4. Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement (including without limitation Conditions 10, 11, 12, 14.3, 25 and 26) shall remain in full force and effect.
- 15. WAIVER**
No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. 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.
- 16. ENTIRE AGREEMENT**
This Agreement contains the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter.
- 17. VARIATION**
- No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 18. ASSIGNATION**
The Company shall not be entitled to assign, transfer, mortgage, charge, subcontract or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of OnGen, such consent not be unreasonably withheld or delayed.
- 19. SEVERANCE**
If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 20. THIRD-PARTY RIGHTS**
No term of this Agreement shall be enforceable by a third party (being any person other than the parties, except a permitted successor or assignee of this Agreement who shall be entitled to enforce the rights or benefits of this Agreement.
- 21. NO PARTNERSHIP OR AGENCY**
Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 22. FORCE MAJEURE**
Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 4 weeks, the party not affected may terminate this Agreement by giving 5 Business Days' written notice to the other party.
- 23. COSTS**
Each party shall be liable for its own costs in relation to the negotiation and execution of this Agreement.
- 24. NOTICES**
- 24.1. Any notice or other communication required to be given under this Agreement, shall be in writing and shall be delivered personally, by email (with either PDF or other non-editable file format attached) or sent by pre-paid first-class post, recorded delivery or by commercial courier, to each party required to receive the notice or communication as set out below:
- (i) OnGen Limited: FAO CEO, OnGen, 5th Floor, 125 Princes Street, Edinburgh EH2 4AD
 - (ii) the Company's address as noted in the Order or as otherwise specified by the relevant party by notice in writing to each other party. However a notice of termination may not be validly given by email.
- 24.2. Any notice or other communication shall be deemed to have been duly received:
- (i) if delivered personally, when left at the address and for the contact referred to in this Condition;

- (ii) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting;
- (iii) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; and
- (iv) if sent by email, at the time of transmission if no failed delivery message is received by the sender.

24.3. The provisions of this Condition shall not apply to the service of any proceedings or other documents in any legal action.

25. DISPUTE RESOLUTION

25.1. In the event the parties are unable to resolve a dispute between them arising out of or relating to the Agreement, and except for claims for interdict or other similar relief, the parties will attempt to settle such dispute by mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by the Centre for Effective Dispute Resolution. The mediation shall take place at a neutral site as reasonably agreed by the parties.

25.2. The mediation agreement referred to in the Model Procedure applicable shall be governed by, and construed and take effect in accordance with the substantive law of Scotland. If the dispute is not settled by mediation within 10 days of commencement of the mediation or within such further period as the parties may agree in writing, the parties shall either resolve the dispute by arbitration or alternatively, notwithstanding the foregoing, either party shall have the option of seeking a remedy in a court of competent jurisdiction, and without prejudice to the court's powers to award expenses.

26. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with Scots law. The Parties irrevocably agree that the courts of Scotland are to have exclusive jurisdiction to settle any questions or disputes which may arise out of or in connection with this Agreement (including non-contractual disputes or claims).