

Dated \_\_\_\_\_ 201[ ]

(1) [INSERT NAME]

(2) [INSERT NAME]

(3) [INSERT NAME]

(4) [INSERT NAME]

**MODEL  
RD SERVICE AND COLLABORATION AGREEMENT**

**Scenario 2 - One Party (called the Lead Exploitation Party) is best suited to carry out the commercialisation of the Results. The other Parties assign or grant an exclusive licence of their IPR in the Results to the Lead Exploitation Party who undertakes to commercialise the Results and to pay the other Parties a share of revenues generated from that commercialisation or a success payment.**

THIS AGREEMENT dated [.....] 201[ ] is made **BETWEEN:**

- (1) [insert Business name] a [insert type of organisation] established and existing under the laws of [insert Country], registry code [insert number], located at [insert address], e-mail [insert e-mail] (the AAA), represented by [insert name];
- (2) [insert Business name] a [insert type of organisation] established and existing under the laws of [insert Country], registry code [insert number], located at [insert address], e-mail [insert e-mail] (the BBB), represented by [insert name]
- (3) [insert Business name] a [insert type of organisation] established and existing under the laws of [insert Country], registry code [insert number], located at [insert address], e-mail [insert e-mail] (the XXX), represented by [insert name]
- (4) [insert Business name] a [insert type of organisation] established and existing under the laws of [insert Country], registry code [insert number], located at [insert address], e-mail [insert e-mail] (the ZZZ), represented by [insert name]

## BACKGROUND

The parties to this agreement wish to collaborate on a research project entitled "[insert name of project]".

This agreement governs the parties' collaboration in relation to that project.

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following expressions have the meaning set opposite:

<b>the Academic Parties:</b>	AAA and BBB;
<b>Academic Publication:</b>	the publication of an abstract, article or paper in a journal or electronic repository, or its presentation at a conference or seminar; and in clauses 6 and 7 <b>to Publish and Publication</b> are to be construed as meaning such publication or presentation;
<b>Academic and Research Purposes:</b>	research [(except [insert any exceptions]), teaching[, and] education[, and];
<b>this Agreement:</b>	this document, including its Schedules, as amended from time to time in accordance with clause 10.8;
<b>Background:</b>	any information, data, techniques, Know-how, inventions, software, discoveries and materials (regardless of the form or medium in which they are disclosed or stored) that are provided by one Party to another Party for use in the Project (whether belonging to that Party or to a third party, and whether before or after the date of this Agreement),, except any Result;
<b>a Business Day:</b>	Monday to Friday (inclusive) except bank or public holidays in [COUNTRY];
<b>the Commencement Date:</b>	[insert the date on which the Project is to start/started];
<b>the Commercial Parties:</b>	XXX and ZZZ;

<b>Confidential Information:</b>	each Party's confidential information is: any Background disclosed by that Party to any of the other Parties for use in the Project [and identified as confidential before or at the time of disclosure]; and any of the Results [in which that Party owns the Intellectual Property Rights] <b>OR</b> [in relation to which it has an exclusive licence]; and any other information disclosed by that Party to any of the other Parties for use in the Project or under this Agreement [and identified as confidential before or at the time of disclosure or which, by its nature or from the circumstances of its disclosure, should reasonably be presumed to be confidential];
<b>Control:</b>	the ability to direct the affairs of another person, whether by virtue of the ownership of shares, by contract, or in any other way;
<b>the Data Protection Legislation:</b>	for so long as the GDPR applies to the [COUNTRY], the European General Data Protection Regulation 2016 ((EU) 2016/679) (the <b>GDPR</b> ) and any national implementing laws, regulations and secondary legislation and any regulations made pursuant to it; any other laws and regulations relating to the processing of personal data and privacy which apply to a Party; and, if applicable, the guidance and codes of practice issued by any competent data protection supervisory authority;
<b>the Exclusive Period:</b>	the period of [X] years beginning on the date of this Agreement;
<b>the Exploitation Strategy:</b>	the strategy agreed by the Parties for the commercialisation of the Results as set out in Schedule 4;
<b>[the External Funding:</b>	[the grant provided under the Offer Letter issued by the Technology Strategy Board] <b>OR</b> [any funding or assistance provided for the Project or to any Party for use in the Project by any third party, including, any state or public body];]
<b>a Financial Contribution:</b>	the financial contribution to be made by a Party to the Project, as set out in the Project Plan;
<b>[the Funding Body:</b>	[insert details of the body which is to provide the External Funding;]
<b>[the Funding Conditions:</b>	the terms [of the Offer Letter issued by the Technology Strategy Board] <b>OR</b> [on which the Funding Body provides any External funding], copies of which are attached to this Agreement as Schedule 3;]
<b>a Group Company:</b>	in relation to a Party, any undertaking which for the time being Controls, or is Controlled by, that Party or which for the time being is Controlled by a third person which also Controls that Party;
<b>Intellectual Property Rights:</b>	patents, rights to inventions, trade marks, service marks, registered designs, copyrights, database rights, design rights, rights to use and protect confidential information, in each case whether registered or unregistered, including rights to apply for and be granted and applications for any

of the above, and any continuations, continuations-in-part, divisional applications, renewals or extensions of, and rights to claim priority from, those rights, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above;

<b>the Key Personnel:</b>	in the case of AAA: [insert names]; in the case of BBB, [insert names]; in the case of XXX [insert names]; and in the case of ZZZ [insert names];
<b>Know-how:</b>	unpatented technical information (including information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) which is not in the public domain;
<b>Lead Exploitation Party:</b>	[insert the name of the party which will take on responsibility for commercialising the Results. It may be the same as the Lead Party, but it may be a different party.];
<b>the Lead Party:</b>	[insert the name of the lead party. This should be the party which is undertaking the duties of the Lead Company as set out in the Technology Strategy Board Offer Letter or other offer of External Funding. It may be the same as the Lead Exploitation Party, but it may be a different party.];
<b>the Location:</b>	the location(s) at which the Project will be carried out as set out in the Project Plan;
<b>a Party:</b>	AAA, BBB, XXX and ZZZ and any person who becomes a party to this Agreement pursuant to clause 2.20, and together they are <b>the Parties</b> ;
<b>the Payment Plan:</b>	the arrangements under which the Lead Exploitation Party, in return for its rights to commercialise the Results, will pay the other Parties, as set out in Schedule 6;
<b>the Project:</b>	the project described in the Project Plan;
<b>the Project Manager:</b>	the individual appointed from time to time by the Lead Party as the project manager [, and approved by the Funding Body in accordance with the Funding Conditions];
<b>the Project Period:</b>	the period described in clause 2.1;
<b>the Project Plan:</b>	the project plan annexed to this Agreement as Schedule 2, as varied from time to time under the terms of this Agreement[ and any Funding Conditions];
<b>Research Purposes:</b>	[any purpose except commercialisation, i.e. licensing for value or sale for value] <b>OR</b> [acts done for experimental purposes [or to obtain regulatory approval for any generic or innovative medicinal product (including any clinical trial)];

<b>the Results:</b>	all information, data, techniques, Know-how, results, inventions, discoveries, software and materials (regardless of the form or medium in which they are disclosed or stored) identified or first reduced to practice or writing in the course of the Project,;
<b>the Steering Committee:</b>	the individuals nominated by each of the Parties[and the Funding Body] in accordance with clause 2.12 to supervise the carrying out of the Project;
<b>a Variation Agreement:</b>	a written agreement signed by or on behalf of the Parties and any proposed new party to this Agreement; and
<b>VAT:</b>	value added tax chargeable under the Value Added Tax Act 1994, or any tax replacing that tax.

- 1.2 The headings in this Agreement are for ease of reference only; they do not affect its construction or interpretation.
- 1.3 References in this Agreement to a **person** include a natural person, corporate or unincorporated body (whether or not it has a separate legal personality).
- 1.4 A reference in this Agreement to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes all subordinate legislation made from time to time under that statute or statutory provision.
- 1.5 A reference in this Agreement to **writing** or **written** includes email.
- 1.6 A reference in this Agreement to any other agreement or document is a reference to that other agreement or document as varied or novated (in each case, unless in breach of this Agreement) from time to time.
- 1.7 References in this Agreement to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.8 Any words in this Agreement following the expression **including, include or in particular**, or any similar expression are to be construed as illustrative and do not limit the sense of the words preceding that expression.
- 1.9 The acts and omissions of its Group Companies are deemed to be within the control of a Commercial Party, the acts and omissions of its students are deemed to be within control of an Institution and the acts and omissions of any contractor are deemed to be within the control of the Party engaging that contractor.

## 2. THE PROJECT

- 2.1 The Project [will begin on] **OR** [began on] the Commencement Date and will continue until [the earlier of the withdrawal of the External Funding, and] the completion of the Project, or until any later date agreed in writing between the Parties. If this Agreement is entered into after the Commencement Date, it will apply retrospectively to work done in relation to the Project on or after the Commencement Date. This Agreement will remain in full force and effect for the duration of the Project, but a Party may withdraw or may be deemed to have withdrawn from the Project in accordance with clause 8 or 9.
- 2.2 Each of the Parties will carry out the tasks allotted to it in the Project Plan, and will provide the human and other resources, Background, materials, facilities and equipment which are designated as its responsibility in the Project Plan. The Project will be carried out under the direction and supervision of [insert details]. The Project will be carried out at the Location.

- 2.3 Each of the Parties will obtain and maintain all regulatory and ethical licences, consents and approvals necessary to allow it to carry out the tasks allotted to it in the Project Plan and will carry out the Project in accordance with all laws and regulations which apply to its activities under or pursuant to this Agreement.
- 2.4 Each of the Parties will ensure that its employees and students (if any) involved in the Project: observe the conditions attaching to any regulatory and ethical licences, consents and approvals; keep complete and accurate records of all research, development and other work carried out in connection with the Project and of all Results, signed by the people who obtained or made each Result, and countersigned by an employee of that Party who is not a member of the research team but who understands the work; and comply with the Good Data Management Practices.
- 2.5 Each of the Parties will ensure that its staff and students (if any) (including in the case of each Commercial Party, any staff of any Group Company) involved in the Project, when working on or visiting the other Party's premises, comply with the other Party's health and safety and security policies and procedures and, when accessing or using the other Party's information systems, comply with the other Party's information security policies and procedures.
- 2.6 Although each of the Parties will use reasonable endeavours to carry out the Project in accordance with the Project Plan, none of the Parties undertakes that any research will lead to any particular result, nor does it guarantee a successful outcome to the Project.
- 2.7 Each of the Parties warrants to the other Parties that it has full power and authority under its constitution, and has taken all necessary actions and obtained all authorisations, licences, consents and approvals, to allow it to enter into and perform this Agreement **[and it is not in breach of the Funding Conditions]**.
- 2.8 There will be a Steering Committee made up of one representative nominated by each of the Parties. The Project Manager (initially **[insert name]**) will be the Lead Party's representative on the Steering Committee. **[The Parties will invite the Funding Body to appoint a representative to the Steering Committee.]** The terms of reference of the Steering Committee are set out in Schedule 5, and the Steering Committee will have no authority to amend the terms of this Agreement except as may be expressly set out in those terms of reference.
- 2.9 Any member of the Steering Committee may participate in meetings of the Steering Committee by tele-conference, video-conference or any other technology that enables everyone participating in the meeting to communicate interactively and simultaneously with each other. The quorum for a meeting of the Steering Committee will be **[one representative of each of the Parties] OR [one representative of at least [3] of the Parties]**, or his alternate, present in person or by tele-conference, video-conference or other technology mentioned above.
- 2.10 **[Insert name]**(if present at a meeting) or, in his absence, any other individual the members of the Steering Committee may from time to time agree, will chair meetings of the Steering Committee.
- 2.11 The Parties will ensure that the Steering Committee meets at least every **[X]** months at venues to be agreed, and in default of agreement at **[insert location]**, or at any other time at the request of any of the Parties. Meetings of the Steering Committee will be convened with at least **[X]** days written notice in advance. That notice must include an agenda. Minutes of the meetings of the Steering Committee will be prepared by the chair of the meeting and sent to each of the Parties within **[X]** days after each meeting.
- 2.12 Each Party will provide the Project Manager with **[monthly][quarterly] OR [annual]** reports summarising the progress of the Project and the Results, and the Lead Party will ensure that the Project Manager keeps all the Parties informed about the progress of the Project and the Results. A copy of each Party's **[monthly][quarterly] OR [annual]** report will be circulated to each member of the Steering Committee with the written notice for the relevant meeting.

- 2.13 Each of the Parties will notify the Project Manager promptly after identifying any Result which it believes to be patentable, and will supply the Project Manager with copies of that Result. Each of the Parties will notify other Results to the Project Manager in the [monthly][quarterly] OR [annual] reports provided under clause 2.12.
- 2.14 Each Party will, through its representative or his alternate, have one vote in the Steering Committee. Decisions will be taken by a simple majority except where a decision necessitates a change to the Project Plan or a change to the allocation of any funding. In either of those cases, any decision must be unanimous. The chairman will [not] have a casting vote.
- 2.15 [In addition to his duties under the Funding Conditions,] the Project Manager will:
- 2.15.1 [be the primary conduit for exchanges of information with the Funding Body];
  - 2.15.2 be responsible to the Steering Committee for the day-to-day management of the Project;
  - 2.15.3 be responsible for the financial administration of the Project [as required by the Funding Conditions];
  - 2.15.4 be responsible for implementing decisions taken by the Steering Committee;
  - 2.15.5 prepare progress reports [as required by the Funding Body]; and
  - 2.15.6 monitor the progress of the Project.
- 2.16 No additional person may become a party to this Agreement without the written agreement of all of the then existing parties to this Agreement [and the Funding Body] and unless the additional person and all the then existing Parties to this Agreement execute a Variation Agreement.

### 3. FINANCIAL CONTRIBUTION, [EXTERNAL FUNDING] AND PAYMENT PLAN

- 3.1 [The allocation of the External Funding will be as set out in the Project Plan unless the Parties unanimously agree otherwise in writing.] Each Party will keep complete and accurate accounts of its expenditure on the Project. Each Party will pay its Financial Contribution to the Project in accordance with Schedule 1 within [X][X] OR [X] days after its receipt of a [quarterly] OR [monthly] invoice for the same. Where any Financial Contribution is being claimed against costs and expenses incurred by a Party, each invoice must be accompanied by a statement certified by an authorised officer of that Party.
- 3.2 Unless any VAT exemption applies, all amounts are exclusive of VAT which the Party making the Financial Contribution will pay at the rate from time to time prescribed by law.
- 3.3 If any Party fails to make any payment due to another Party under this Agreement, without prejudice to any other right or remedy available to that other Party, that other Party may charge interest (both before and after any judgement) on the amount outstanding, on a daily basis [at the rate of [four] per cent per annum]. That interest will be calculated from the date of last date for payment to the actual date of payment, both dates inclusive, and will be compounded quarterly. The Party which is late paying will pay that interest on demand.
- 3.4 [Except as set out in the Project Plan,] each Party will own all equipment purchased or constructed by it, or for it, using any Financial Contribution [or any External Funding].
- 3.5 The financial arrangements for the Project will be overseen by the Steering Committee [and will be as set out in the Funding Conditions].
- 3.6 The Lead Party will ensure that the Project Manager prepares and submits an account of all income and expenditure in connection with the Project [quarterly] to the Steering Committee.

- 3.7 The Lead Party will ensure that the Project Manager allows an independent chartered accountant appointed by any Party, at that Party's expense, to examine the accounts and records of the Project Manager relating to the Project provided:
- 3.7.1 at least [X] days written notice is given in advance to the Project Manager;
  - 3.7.2 the inspection or examination takes place during the Project Manager's normal working hours; and
  - 3.7.3 the Party appointing the accountant and the accountant will keep confidential any information which it may acquire in the exercise of its rights under this clause 3.7.
- 3.8 Each Party will pay each of the other Parties in accordance with the Payment Plan. Any Party to which another Party is obliged to make payments under the Payment Plan may appoint an independent chartered accountant, at its own expense, to examine the accounts and records of the Party which is obliged to make payments to it relating to its exploitation of the Results provided:
- 3.8.1 at least [X] days written notice is given in advance to the Party whose accounts and records are to be inspected;
  - 3.8.2 the inspection or examination takes place during that Party's normal working hours; and
  - 3.8.3 the Party appointing the accountant and the accountant will keep confidential any information which it may acquire in the exercise of its rights under this clause 3.8.

#### 4. USE AND EXPLOITATION OF INTELLECTUAL PROPERTY RIGHTS

- 4.1 This Agreement does not affect the ownership of any Intellectual Property Rights in any Background or in any other technology, design, work, invention, software, data, technique, know-how, or materials which are not Results. The Intellectual Property Rights in them will remain the property of the Party which contributed them to the Project (or its licensors). No licence to use any Intellectual Property Rights is granted or implied by this Agreement except the rights expressly set out in this Agreement.
- 4.2 [Each Party grants each of the other Parties a royalty-free, non-exclusive licence to use its Background for the purpose of carrying out the Project. None of the Parties may grant any sub-licence to use any other Party's Background except that any Commercial Party may allow any of its Group Companies, and any person working for or on behalf of it or any of its Group Companies, to use any Party's Background for the purpose of carrying out the Project.]

**OR**

- [Each Party grants to each of the other Parties a royalty-free, non-exclusive licence to use its Background for the purpose of carrying out the Project and[, in return for the payments to be made to it under the Payment Plan,] each Party grants to the Lead Exploitation Party a non-exclusive[, fully paid-up, royalty free] licence (with the right to sub-licence) to use the Intellectual Property Rights in its Background to the extent necessary to allow the Lead Exploitation Party to comply with its obligations under clause 4.11. The licence granted in this clause 4.2 will automatically terminate on the [withdrawal or deemed withdrawal of the Lead Exploitation Party from the Project] **OR** [termination of the licence granted in clause 4.3.]]
- 4.3 The Lead Exploitation Party will [own the Intellectual Property Rights in the Results] **OR** [have a worldwide exclusive licence to commercialise the Intellectual Property Rights in the Results] [for the Exclusive Period]], and [will take such steps, after consultation with the Steering Committee, as may be necessary] **OR** [may take such steps as it may decide] from time to time, at the Lead Exploitation Party's expense, to register and maintain any protection for those Intellectual Property Rights, including filing and prosecuting patent applications for any of the



Results, and taking any reasonable action in respect of any alleged or actual infringement of those Intellectual Property Rights] so as to allow it to comply with its obligations to commercialise the Results under clause 4.11.

- 4.4 Without prejudice to its obligations under clause 4.3, if the Lead Exploitation Party does not think it necessary to register or to maintain any protection for the Intellectual Property Rights in the Results or to take any action against any infringer of the Intellectual Property Rights in the Results, it will notify the Project Manager accordingly and in good time before abandoning any application or before failing to meet any deadline and, without prejudice to any other right which any Party may have against the Lead Exploitation Party, the Party which created those Intellectual Property Rights may take such steps as it sees fit to register and maintain any protection for those Intellectual Property Rights, including filing and prosecuting patent applications for any Result, and taking any action in respect of any alleged or actual infringement of that Intellectual Property Rights.
- 4.5 Each of the other Parties will ensure that its employees and students (if any) involved in the creation of the Results gives the Lead Exploitation Party such assistance (except financial assistance) as the Lead Exploitation Party may reasonably request in connection with the registration and protection of the Intellectual Property Rights in the Results, including filing and prosecuting patent applications for any of the Results, and taking any action in respect of any alleged or actual infringement of those Intellectual Property Rights.
- 4.6 Where any third party (such as a student or contractor) is involved in the Project, the Party engaging that third party will ensure that that third party has assigned to that Party any Intellectual Property Rights (including making a prospective assignment where appropriate) which that third party has in the Results in order to be able to give effect to the provisions of this clause 4.
- 4.7 The Lead Exploitation Party grants each of the other Parties a royalty free, non-exclusive licence to use the Results for the purpose of carrying out the Project. None of the Parties (except the Lead Exploitation Party) may grant any sub-licence to use any of the Results except that any Commercial Party may allow any of its Group Company and any person working for or on behalf of the Commercial Party or any of its Group Companies to use the Results for the purpose of carrying out the Project
- 4.8 [In return for the payments to be made to it under the Payment Plan, to the extent that any Intellectual Property Rights in the Results are capable of prospective assignment, each of the Parties (except the Lead Exploitation Party) now assigns its Intellectual Property Rights in the Results to the Lead Exploitation Party; and to the extent that any Intellectual Property Rights in the Results cannot be assigned prospectively, each of the other Parties will assign such of the Intellectual Property Rights as it owns in the Results to the Lead Exploitation Party as and when those Intellectual Property Rights are created, at the request of the Lead Exploitation Party.

**OR**

[In return for the payments to be made to it under the Payment Plan, each of the Parties (except the Lead Exploitation Party) now grants the Lead Exploitation Party a worldwide exclusive licence [for the duration of the Exclusive Period] to commercialise the Results in any way the Lead Exploitation Party sees fit, provided it complies with clause 4.10.]

- 4.9 Each Academic Party and each of its employees and students will have the irrevocable, royalty-free right to use any of the Results [(except the following types of Result: [insert details]) for Academic and Research Purposes [including] OR [excluding] research projects which are carried out by the Academic Party with any third party [in the commercial sector] [and Clinical Patient Care].
- 4.10 Each of the Commercial Parties will have a royalty-free, non-exclusive, worldwide, indefinite licence to use any of the Results for Research Purposes (with the right to sub-license to any of its Group Companies and to any person working for, or on behalf of, the Commercial Party or any of its Group Companies, but only for the purpose of carrying out that work for Research Purposes, and otherwise without the right to sub-license).

- 4.11 The Lead Exploitation Party will use all reasonable endeavours to commercialise the Results in accordance with the Exploitation Strategy [during the Exclusive Period]. Each of the other Parties will notify the Lead Exploitation Party of any opportunity for the commercialisation of the Results of which it becomes aware and no Party will do anything or omit to do anything that prevents the commercialisation of the Results in accordance with the Exploitation Strategy.

## 5. ACADEMIC PUBLICATION AND IMPACT

- 5.1 The Project is undertaken by the Academic Parties in pursuance of a primary charitable purpose; that is the advancement of education through teaching and research. Therefore, notwithstanding any other provision of this Agreement, any employee or student of an Academic Party (whether or not involved in the Project) may, provided that Academic Party has not received a Confidentiality Notice under clause 5.2:

5.1.1 discuss work undertaken as part of the Project in the Academic Party's seminars, tutorials and lectures; and

5.1.2 Publish any Background of any of the Parties or any of the Results.

- 5.2 Each of the Academic Parties will submit to the Lead Exploitation Party and to any Party which has contributed any Background to the Project, in writing, details of, respectively the Results, and of that Background which any employee or student of that Academic Party intends to Publish, at least [X] OR [X] days before the date of the proposed submission for Publication. The Lead Exploitation Party or the Party which has contributed the Background (as the case may be) may, by giving written notice to the Party which has submitted those details (a Confidentiality Notice):

5.2.1 require that Party to delay the proposed Publication for a maximum of [insert period] month[s] after receipt of the Confidentiality Notice if, in its reasonable opinion, that delay is necessary in order to seek patent or other protection for any of the Intellectual Property Rights in any of the Results or any of its Background which are to be Published; or

5.2.2 prevent the Publication of any of its Background which is Confidential Information and which, in each case, cannot be protected by patent or other Intellectual Property Right registration protection or which can be protected in that way but which the Lead Exploitation Party or the contributor of that Background has chosen not to protect in that way.

The Confidentiality Notice must be given within [X] OR [X] days after receipt of details of the proposed Publication. If a Confidentiality Notice is not received within that period, the proposed Publication may proceed, [except in relation to any other Party's Background which is that Party's Confidential Information and which may not be Published unless that Party has given its written consent to that Publication].

- 5.3 Each of the Parties acknowledge that the Academic Parties are required by their funders to demonstrate their impact on society and agrees to provide to each Academic Party any information which that Academic Party reasonably requests in order to allow it to demonstrate that impact provided that, under or pursuant to this clause: the Academic Parties will not be entitled to receive or disclose any other Party's Confidential Information or any information which identifies or allows any living individual to be identified and the information requested and disclosed under or pursuant to this clause will be general in nature.

## 6. CONFIDENTIALITY

- 6.1 [Without prejudice to any obligations of confidentiality in the Funding Conditions,] and subject to clause 5, none of the Parties will [, during the Project Period, and for [X] OR [X] years after

the end of the Project Period,] disclose to any third party nor use for any purpose, except as expressly permitted by this Agreement, any other Party's other Confidential Information.

- 6.2 None of the Parties (**the Recipient**) will be in breach of any obligation to keep any Background, Results or other information confidential or not to disclose it to any third party to the extent that:
- 6.2.1 if it is received from another Party, is known to the Recipient or any of the Recipient's Group Companies (demonstrable by written records) before its receipt from another Party, and it is not already subject to any obligation of confidentiality to another Party;
  - 6.2.2 it is or becomes publicly known without any breach of this Agreement or any other undertaking to keep it confidential;
  - 6.2.3 it has been obtained by the Recipient or any of the Recipient's Group Companies from a third party in circumstances where the Recipient has no reason to believe that there has been a breach of an obligation of confidentiality to another Party;
  - 6.2.4 it has been independently developed by the Recipient or any of the Recipient's Group Companies without reference to another Party's Confidential Information; or
  - 6.2.5 it is disclosed pursuant to the requirement of any law or regulation applies to the information disclosed or the order of any Court of competent jurisdiction or the requirement of any competent regulatory authority and that, in each case where the law permits, and the party required to make that disclosure has informed the Party whose information it is, within a reasonable time after being required to make the disclosure, of the requirement to make the disclosure and the information required to be disclosed; or
  - 6.2.6 it is approved for release in writing by an authorised representative of the Party whose information it is.
- 6.3 None of the Parties will be in breach of any obligation to keep another Party's Background, Results or other information, confidential or not to disclose them to any third party by:
- 6.3.1 [except in relation to another Party's Background which is that Party's Confidential Information,] Publishing them if that Party has followed the procedure in clause 5.2 and has received no Confidentiality Notice within the period stated in that clause; or
  - 6.3.2 making them available to any student of an Academic Party who needs to know the same in order to exercise the rights granted in this Agreement, provided they are not used except as expressly permitted by this Agreement and the student undertakes to keep that Background, those Results and that information confidential.
- 6.4 None of the Parties will be in breach of any obligation to keep another Party's Background, Results or other information, confidential or not to disclose them to any third party, by making them available to any of its Group Companies or any person working for or on behalf of it or any of its Group Companies, who needs to know the same in order to exercise the rights granted to it in or pursuant to this Agreement provided they are not used except as expressly permitted by this Agreement and the recipient undertakes to keep that Background, those Results or that information confidential.
- 6.5 [No Party will be in breach of any obligation to keep any other Party's Confidential Information, confidential or not to disclose it to any third party by disclosing it to the Funding Body in accordance with the Funding Conditions.]
- 6.6 None of the Parties will use another Party's name or the name of any of the Key Personnel provided by another Party, or another Party's logo, in any press release or product advertising, or for any other promotional purpose, without first obtaining that other Party's written consent.

6.7 [Notwithstanding any other provision of this Agreement, each Academic Party may identify the sums received from each of the other Parties in the Academic Party's Annual Report and similar publications][, and each Commercial Party may, in order to comply with any transparency reporting obligations to which it is subject, publish details of any transfers of value].]

## 7. LIMITATION OF LIABILITY

7.1 None of the Parties makes any representation or gives any warranty to any of the other Parties that any advice or information given by it or any of its employees or students who work on the Project, or the content or use of any Results, Background or materials, works or information provided in connection with the Project, will not constitute or result in any infringement of third party rights.]

7.2 Except under [the warranty in clause 7.1 [and in clause 7.10] and] the indemnities in clause 7.3 and 7.4, and subject to clause 7.8, none of the Parties accepts any liability or responsibility for any use which may be made by any other Party of any of the Results, nor for any reliance which may be placed by any other Party on any of the Results, nor for advice or information given in connection with any of the Results.

7.3 Subject to clause 7.7.1, each of the Commercial Parties will indemnify each of the other Parties and their employees and students (together **the Indemnified Parties**), and keep them fully and effectively indemnified, against each and every claim made against any of the Indemnified Parties as a result of the Lead Exploitation Party's use of any of the following: the Results and any materials, works or information received from an Indemnified Party pursuant to this Agreement, provided that the Indemnified Party must:

7.3.1 promptly notify the Lead Exploitation Party of details of the claim;

7.3.2 not make any admission in relation to the claim;

7.3.3 take reasonable steps to mitigate its losses and expenses arising from the claim;

7.3.4 allow the Lead Exploitation Party to have the conduct of the defence and settlement of the claim; and

7.3.5 give the Lead Exploitation Party all reasonable assistance (at the Lead Exploitation Party's expense) in dealing with the claim.

The indemnity in this clause 7.3 will not apply to the extent that the claim arises as a result of the Indemnified Party's negligence, its deliberate breach of this Agreement, any breach of clause 6 or its knowing infringement of any third party's Intellectual Property Rights or its knowing breach of any third party's rights of confidence.

7.4 Subject to clauses 7.7 and 7.8, and except under the indemnities in clauses 7.3 and 7.4, the liability of each Party to all of the other Parties for any breach of this Agreement, any negligence or arising in any other way out of the subject matter of this Agreement, the Project and the Results, will not extend to:

7.5.1 any indirect damages or losses; or

7.5.2 any loss of profits, loss of revenue, loss of data, loss of contracts or opportunity, whether direct or indirect,

Even, in each case, if the Party bringing the claim has advised the other of the possibility of those losses, or even if they were within the other Party's contemplation.

7.6 Subject to clauses 7.7 and 7.8, the aggregate liability of each Party to all of the other Parties for any or all breaches of this Agreement, any negligence, or arising in any other way out of the subject matter of this Agreement, the Project and the Results, will not exceed in total [that

Party's Financial Contribution] [the portion of the External Funding allocated to that party] OR [£insert amount].

7.7 Subject in each case to clause 7.8, the aggregate liability of each Party to the all the other Parties:

7.7.1 under the indemnity in clause 7.3 will not exceed in total EURO[insert figure];

7.7.2 under the indemnity in clause 7.4 will not exceed in total EURO[insert figure]; and

7.8 Nothing in this Agreement limits or excludes any Party's liability for:

7.8.1 death or personal injury caused by negligence;

7.8.2 any fraud or for any sort of liability which, by law, cannot be limited or excluded; or

7.8.3 [any loss or damage caused by a deliberate breach of this Agreement].

7.9 The express undertakings and warranties given by the Parties in this Agreement are in lieu of all other warranties, conditions, terms, undertakings and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing or in any other way. All of these are excluded to the fullest extent permitted by law.

## 8. FORCE MAJEURE

If the performance by any Party of any of its obligations under this Agreement (except a payment obligation) is delayed or prevented by circumstances beyond its reasonable control, that Party will not be in breach of this Agreement because of that delay in performance. However, if the delay in performance lasts for more than [X] OR [X] months, the other Parties may, if they unanimously agree to do so, give that Party notice treating it as having withdrawn from the Project and the provisions of clauses 9.4 - 9.12 (inclusive) will apply.

## 9. TERMINATION AND WITHDRAWAL

9.1 If they unanimously agree to do so, the other Parties may treat any Party as having withdrawn from the Project with immediate effect by giving notice to that party if that Party:

9.1.1 is in breach of any provision of this Agreement (including an obligation to make payment) and (if it is capable of remedy) the breach has not been remedied within [X] days after receipt of written notice specifying the breach and requiring its remedy;

9.1.2 becomes insolvent, or if an order is made or a resolution is passed for its winding up (except voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed over the whole or any part of its assets, or if it makes any arrangement with its creditors.

9.2 Each of the Parties will notify the Project Manager promptly if at any time any of the Key Personnel appointed by that Party is unable or unwilling to continue to be involved in the Project. Within [X] months after the date of that notice, the Party who originally appointed that member of the Key Personnel will nominate a successor. The other Parties will not unreasonably refuse to accept the nominated successor, but if the successor is not acceptable to the other Parties on reasonable grounds, the other Parties may treat that Party as having withdrawn from the Project by giving not less than [X] months' notice.

9.3 If a Party withdraws or is treated as having withdrawn from the Project, the other Parties will use reasonable endeavours to reallocate the obligations of that Party under this Agreement [and under the Funding Conditions] amongst themselves or to a third party acceptable to the remaining Parties [and the Funding Body], provided that that third party agrees to be bound by the terms of this Agreement [and the Funding Conditions].

- 9.4 Rights in respect of its Background granted under this Agreement by a Party which withdraws or is treated as having withdrawn will continue indefinitely and will be extended to any new party to this Agreement.
- 9.5 Rights in respect of its Results granted under this Agreement by a Party which withdraws or is treated as having withdrawn will continue indefinitely and will be extended to any new party to this Agreement.
- 9.6 The rights and obligations of any co- owner of any Intellectual Property Rights will continue in accordance with clauses 4, despite the fact that one or more co- owners have withdrawn or are treated as having withdrawn from the Project.
- 9.7 Subject to clauses 9.6 and 9.8, all rights to use any other Party's Intellectual Property Rights granted under this Agreement to a Party which withdraws or is treated as having withdrawn will cease immediately on the expiry of the withdrawal notice given by or to that Party.
- 9.8 Any rights to use any Results or Background for Academic and Research Purposes and any right to Publish in accordance with clause 5 will survive the withdrawal or deemed withdrawal of any Party and continue indefinitely.
- 9.9 Subject to clause 9.11, on the termination of this Agreement, the Commercial Parties will pay the Academic Parties for all work done before termination. If a Commercial Party withdraws or is treated as having withdrawn from the Project, it will pay the other Parties for all work done before termination [and not covered by the External Funding] and it will re-imburse the other Parties for all costs and expenses which they have incurred or agreed to incur and which they are unable to cancel.
- 9.10 Subject to clause 9.13, following the withdrawal or deemed withdrawal of a Commercial Party, if its Financial Contribution was intended to cover the costs of employing any Academic Party's staff involved in the Project, that Commercial Party will continue to reimburse, in accordance with clause 3, the actual direct employment costs of staff who were appointed by that Academic Party to work on the Project before the service of the withdrawal notice, provided that that Academic Party takes all reasonable steps to minimise those costs. Reimbursement will continue until the effective date of termination of each staff contract or the date on which the Project was to have ended (whichever is the earlier). Those direct employment costs will include a proportion of any redundancy costs which have been incurred by that Academic Party as a direct result of the withdrawal or deemed withdrawal of that Commercial Party, that proportion to be calculated by dividing the individual's involvement in the Project by the duration of his period of employment by that Academic Party.
- 9.11 A Party which withdraws or which is treated as having withdrawn from the Project may not recover from any of the other Parties any of its costs incurred in connection with the Project to the extent that those costs were incurred after the date of its withdrawal or deemed withdrawal.
- 9.12 If any Party has paid any of the Financial Contribution in advance and the whole of that contribution has not, by the end of the Project Period or the termination of this Agreement, been used for the purposes for which that Financial Contribution was provided, the Party which received that Financial Contribution will return to the Party providing it the unused portion of that Financial Contribution.

## 10. GENERAL

- 10.1 **Notices:** Any notice to be given under this Agreement must be in writing, must be delivered to the other Party or Parties by any of the methods set out in the left hand column below and will be deemed to be received on the corresponding day set out in the right hand column.

### Method of service

By hand or courier

### Deemed day of receipt

the day of delivery

By pre-paid first class post	the second Business Day after posting
By recorded delivery post	the next Business Day after posting

The Parties' respective representatives for the receipt of notices are, until changed by notice given in accordance with this clause, as follows:

<b>For AAA:</b>	<b>For BBB:</b>
Name:	Name:
Address:	Address:
<b>For XXX:</b>	<b>For ZZZ:</b>
Name:	Name:
Address:	Address:

- 10.2 **Assignment etc:** None of the Parties may assign or transfer this Agreement as a whole, or any of its rights or obligations under it, without first obtaining the written consent of all of the other Parties[, except that a Commercial Party may assign this Agreement as a whole to a Group Company without the consent of the other Parties]. No Party will unreasonably withhold or delay its consent.
- 10.3 **Illegal/unenforceable provisions:** If the whole or any part of any provision of this Agreement is void or unenforceable in any jurisdiction, the other provisions of this Agreement, and the rest of the void or unenforceable provision, will continue in force in that jurisdiction, and the validity and enforceability of that provision in any other jurisdiction will not be affected.
- 10.4 **Waiver of rights:** If a Party fails to enforce or delays in enforcing an obligation of any other Party, or fails to exercise or delays in exercising a right under this Agreement, that failure or delay will not affect its right to enforce that obligation or constitute a waiver of that right. Any waiver by a Party of any provision of this Agreement will not, unless expressly stated to the contrary, constitute a waiver of that provision on a future occasion.
- 10.5 **No agency etc:** Nothing in this Agreement creates, implies or evidences any partnership or joint venture between the Parties, or the relationship between them of principal and agent. None of the Parties has any authority to make any representation or commitment, or incur any liability, on behalf of any other Party.
- 10.6 **Entire agreement:** This Agreement [and the Funding Conditions] constitute[s] the entire agreement between the Parties relating to its subject matter. Each Party acknowledges that it has not entered into this Agreement on the basis of any warranty, representation, statement, agreement or undertaking except those expressly set out in this Agreement [or the Funding Conditions]. Each Party waives any claim for breach of this Agreement, or any right to rescind this Agreement in respect of any representation which is not an express provision of this Agreement [or the Funding Conditions]. However, this clause does not exclude any liability which any Party may have to any other (or any right which any Party may have to rescind this Agreement) in respect of any fraudulent misrepresentation or fraudulent concealment prior to the execution of this Agreement.
- 10.7 **Formalities:** Each Party will take any action and execute any document reasonably requested by any other Party to give effect to any of its rights under this Agreement, or to enable their registration in any relevant territory provided the requesting Party pays the other Party's reasonable expenses of doing so.

- 10.8 **Amendments:** No variation or amendment of this Agreement will be effective unless it is made in writing and signed by each Party's representative.
- 10.9 **Third parties:** No one except a Party has any right to prevent the amendment of this Agreement or its termination, and no one except a Party may enforce any benefit conferred by this Agreement.
- 10.10 **Governing law:** This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation are governed by, and this Agreement is to be construed in accordance with, [COUNTRY] law. The [COUNTRY] Courts will have exclusive jurisdiction to deal with any dispute (including any non-contractual claim or dispute) which has arisen or may arise out of or in connection with this Agreement, except that a Party may bring proceedings to protect its Intellectual Property Rights or Confidential Information in any jurisdiction.
- 10.11 **Escalation:** If the Parties are unable to reach agreement on any issue concerning this Agreement or the Project within [X] days after one party has notified the Project Manager of that issue, they will refer the matter to [insert officer] in the case of AAA, to [insert officer] in the case of BBB, to [insert officer] in the case of XXX, and to [insert officer] in the case of ZZZ in an attempt to resolve the issue within [X] days after the referral. Any Party may bring proceedings in accordance with clause 10.10 if the matter has not been resolved within that [X] day period, and any Party may apply to the court for an injunction, whether or not any issue has been escalated under this clause 10.11.
- 10.12 **Counterparts:** This Agreement may be executed in any number of counterparts. Once it has been executed and each Party has executed at least one counterpart, each counterpart will constitute a duplicate original copy of this Agreement. All the counterparts together will constitute a single agreement. The transmission of an executed counterpart of this Agreement (but not just a signature page) by e-mail (such as in PDF or JPEG) will take effect as the delivery of an executed original counterpart of this Agreement. [If that method of delivery is used, each Party will provide the other Party with the original of the executed counterpart as soon as possible.]

**SIGNED** for and on behalf of **AAA:**

Name

Position

Signature

**SIGNED** for and on behalf of **BBB:**

Name

Position

Signature

**SIGNED** for and on behalf of **XXX:**

Name

Position

Signature

**SIGNED** for and on behalf of **ZZZ:**

Name

Position

Signature



**SCHEDULE 1**

**The Financial Contributions**

## **SCHEDULE 2**

### **The Project Plan**

**Project Title**

**Project Objectives**

**Location**

**Background/Materials to be contributed by each Party**

**Tasks to be carried out by each Party**

**Timetable**

**Human resources, facilities and equipment each Party is to provide**

**Results Anticipated**

**Key Personnel of each Party**

**Allocation of External Finding**

**[Equipment ownership]**

**Other Terms**

**[SCHEDULE 3**

**The Funding Conditions]**

## **SCHEDULE 4**

### **The Exploitation Strategy**

## **SCHEDULE 5**

### **Terms of Reference of the Steering Committee**

**SCHEDULE 6**  
**The Payment Plan**