

FORM OF AGREEMENT

THIS AGREEMENT IS MADE THIS DAY OF

Between:

The Secretary of State for Environment, Food and Rural Affairs (“Authority”)

- and -

(together, “Contractor”)

- and -

type in the names of the co-funders

(together, “Co-funders”)

WHEREAS:

- A. The Authority wishes to have carried out the research Project identified in the Specification.
- B. The Contractor has submitted to the Authority a Proposal to carry out the Project.
- C. The Authority and the Co-funders are willing to provide funding for the Project.

NOW IT IS HEREBY AGREED:

1. The Contractor, the Authority and the Co-funders agree to observe and comply with the Defra Standard Terms and Conditions for Research and Development Contracts which are incorporated into this Agreement.
2. The Contractor will carry out the Project in accordance with the Specification.
3. The Authority and the Co-funders will pay to the Contractor the agreed costs properly incurred in carrying out the Project.
4. This Agreement supersedes and replaces any and all previous contracts, agreements and statements relating to the Project, and consists of:
 - this Form of Agreement
 - the Specification;
 - the Schedules; and
 - the Defra Standard Terms and Conditions for Research and Development Contracts.

5. [The Contractor shall commence work on the Project on .] [The Contractor shall commence work on the Project within 3 months of the date of this Agreement and shall inform the Authority immediately the Date for Commencement for the Project is known.]
6. [The Contractor shall complete the Project by .][The Contractor shall complete the Project within years of the commencement of the Project.]
7. Conditions 7.1.3, 10 (excluding the requirement in respect of sub-contractors), 13 (to the extent that it relates to the warranty in 7.1.3), 16, 23.1 and 34.2 shall not apply as between the Authority and a Party who is part of the Crown. Further, where the Contractor enters into a contract with a sub contractor who is part of the Crown, the Contractor will not require the sub-contractor to comply with provisions comparable to the said Conditions or Condition 10.3.
8. To the extent that a Party is part of the Crown this Agreement is not intended to, and does not create any legally binding relationship between the Authority and that Party.
9. For the purposes of Clause 31 of the Terms and Conditions (conflict or inconsistency), the documents shall take precedence in the order in which they appear in clause 4 of this Form of Agreement.

Signed on behalf of the Authority

Name

Date

Signed on behalf of the Contractor:

Name of Contractor: Signature: Name of signatory: Date:	Name of Contractor: Signature: Name of signatory: Date:	Name of Contractor: Signature: Name of signatory: Date:
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Signed on behalf of the Co-funders:

Name of Co-funder:	Name of Co-funder:	Name of Co-funder:
Signature:	Signature:	Signature:
Name of signatory:	Name of signatory:	Name of signatory:
Date:	Date:	Date:
Name of Co-funder:	Name of Co-funder:	Name of Co-funder:
Signature:	Signature:	Signature:
Name of signatory:	Name of signatory:	Name of signatory:
Date:	Date:	Date:

PRICING SCHEDULE

1. The Authority and the Co-funders, taken together, will pay to the Contractor no more than the fixed sum of:

£ , exclusive of VAT.

2. The total of the payments (exclusive of VAT) to be made in accordance with the Agreement, for each Financial Year, will be:

The Authority:

Year	[Name]	[Name]	Total
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Total

The Co-Funder:

Year	[Name]	[Name]	Total
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Total

3. Subject to any variation of the Project, the amount in paragraph 1, above, shall remain firm throughout the duration of the Agreement.
4. In the event that the Agreement is varied, the amount in paragraph 1 shall be adjusted by such reasonable sum as may be agreed, in writing, between the Authority, Co-funders and the Contractor.
5. The Payment arrangements shall be as follows:
 - 5.1 Payments in each Financial Year will be made in 12 equal instalments, one payment to be made at the end of each calendar month.

- 5.2 The Authority and Co-funders are liable to the Contractor only for their respective payments in accordance with The Pricing Schedule. The Authority and the Co-funders are not jointly or severally liable to the Contractor in respect of any payment to be made under the Agreement.
- 5.3 Where the Contractor is not VAT exempt, and is required to charge VAT to the Authority and to the Co-funders at the current rate, the Contractor shall submit a VAT invoice at the beginning of each Financial Year covering all payments to be made during that year. No payment will be made by the Authority or by the Co-funders to such Contractor unless and until this invoice is received by the Authority and by the Co-funders. The Contractor must exercise care not to charge VAT on expenses which are not chargeable to VAT.
- 5.4 Any overpayment to the Contractor made by the Authority or Co-funders, whether of Project price or of VAT, shall be a sum of money recoverable by the Authority or Co-funders from the Contractor.

REPORTS SCHEDULE

1. The Contractor shall submit the reports required by this Schedule to the Authority and to the Co-funders' Representative at their respective addresses set out in the Contacts Schedule.
2. Unless otherwise authorised in writing by the Authority, the Contractor shall submit an annual report for each Project Year in accordance with this Schedule.
3. The Contractor shall submit an annual report for each Project Year to the Authority's Representative, as follows. The Contractor shall provide one hard copy of the report, and one copy on either computer readable disk or e-mail in the format specified by or agreed with the Authority, no later than 4 weeks after the end of each Project Year, or, for work lasting one year or less, no later than 4 weeks after the end of the first six months. This report shall:
 - 3.1 list the scientific objectives as set out in paragraph 4 of the Specification, indicating where amendments have been agreed;
 - 3.2 indicate in non-scientific terms the scientific progress achieved since the commencement of the Project or since the last report; how this relates to the policy objectives as set out in the relevant current statement of policy rationale and programme objectives relating to research and development issued by the Authority using the Rationale Objectives Appraisal Monitoring Evaluation. (ROAME) system, plus any findings of particular interest;
 - 3.3 indicate whether the scientific objectives in paragraph 4 of the Specification are appropriate for the remainder of the Project, giving reasons for any changes, together with financial, staff and time implications;
 - 3.4 list the milestones for the relevant Project Year as set out in paragraph 6 of the Specification, indicating which milestones have been met and whether the remaining milestones appear realistic;
 - 3.5 list any outputs, e.g. published papers or presentations and identify any opportunities for exploiting any Intellectual Property or technology transfer arising out of the Project and any action taken to protect and exploit such Intellectual Property;
 - 3.6 comment briefly on any new scientific opportunities which may arise from the Project.
4. The Contractor shall submit by the completion date of the Project a final report consisting of two hard copies, and one electronic copy on either computer readable disk or by e-mail in a format specified by the Authority. The report shall include the following.
 - 4.1 the Project's code and title as set out in the Specification; the name of the Contractor; the total Defra Project costs (the agreed fixed price); and the Project's Date for Commencement and Date for Completion.
 - 4.2 an executive summary of not more than two sides of A4 written in a style understandable to the intelligent non-scientist. This should include the main

objectives of the Project; the methods and findings of the research; and any other significant events and options for new work.

4.3 a scientific report (which as a guide should be no longer than 20 sides of A4) to include:

4.3.1 the scientific objectives as set out in the Agreement;

4.3.2 the extent to which the objectives set out in the Agreement have been met;

4.3.3 details of methods used and the Results obtained, including statistical analysis where appropriate;

4.3.4 a discussion of the Results and their reliability;

4.3.5 the main implications of the findings;

4.3.6 possible future work;

4.3.7 any action resulting from the research (eg protection of Intellectual Property, knowledge transfer).

5. Final reports will usually be published on the Authority's website. When submitting the final report to the Authority the Contractor shall indicate any information contained in the report which he considers to be commercially sensitive and the Authority shall not disclose such information without first having consulted the Contractor.

6. The Authority reserves the right to return to the Contractor any annual or final report submitted by the Contractor which is not, in the reasonable opinion of the Authority, satisfactory, either in form or content, having regard to the provisions of this Schedule. In the event that such a report is returned to the Contractor, the Contractor shall remedy any deficiencies identified by the Authority and submit a revised report at no additional cost to the Authority or the Co-funders.

7. The Contractor shall supply any additional reports, including financial reports, in respect of the Project, at such time or times, and in such form, as the Authority may reasonably require.

CONTACTS SCHEDULE

1. Authority

- 1.1 The Authority's Representative will be:

- 1.2 The Authority's address for correspondence and service will be:

- 1.3 The Authority's address for submission of reports under the Reports Schedule, if different from the above, will be:

- 1.4 The Authority's address for submission of invoices will be:

2. Contractor

- 2.1 The Contractor's Representative will be:

- 2.2 The Contractor's address for correspondence and service will be:

- 2.3 Where the Contractor consists of more than one person there shall be only one individual acting as the Contractor's Representative.

3. Co-funder(s)

- 3.1 The Co-funders' Representative will be: ¹

- 3.2 The Co-funders' address for correspondence and service will be:

¹ If there is more than one Co-funder a Co-funder's Representative should be listed for each Co-Funder with the relevant address.

DEFRA STANDARD TERMS AND CONDITIONS FOR RESEARCH AND DEVELOPMENT

1. DEFINITIONS

1.1 In these terms and conditions the following words and expressions shall have the meanings given to them below, unless the context otherwise requires:

“Agreement”	The agreement between the Authority, the Co-funders and the Contractor incorporating Form of Agreement and documents referred to therein.
“Authority”	The Secretary of State for Environment, Food and Rural Affairs (acting through the Department for Environment, Food and Rural Affairs) and any persons authorised to act on the Secretary of State’s behalf.
“Authority’s Property”	Anything issued or otherwise provided in connection with the Agreement by or on behalf of the Authority or any person authorised to act on its behalf.
“Contractor”	The person or persons named on the Form of Agreement as the Contractor. Where the Contractor consists of more than one person, the obligations of those persons in respect of the Agreement shall be joint and several.
“Contractor’s Representative”	The person named in paragraph 2 of the Contacts Schedule, subject to the provisions of Condition 5.
“Co-funders”	The person or persons named in the Form of Agreement as Co-funders. Where the Co-funders consist of more than one person, the obligations of those persons in respect of the Agreement shall be joint and several.
“Co-funders’ Representative”	The person or persons named in paragraph 3 of the Contacts Schedule, subject to the provisions of Condition 5.
“Date for Commencement”	The date set out in paragraph 5 of the Form of Agreement.

“Date for Completion”	The date set out in paragraph 6 of the Form of Agreement. Unless the Authority has not received a final report as set out in paragraph 4 of the Reports Schedule, in which case the Completion Date shall be the date on which the Authority receives such a report.
“Costs”	Costs incurred by the Contractor for the purposes of the carrying out of the Project, limited to those costs identified in the ‘Financial Guidelines for Project Cost Estimates’ section of the Proposal.
“Equipment”	All equipment, materials, consumables and plant, other than the Authority’s Property, to be used by the Contractor in carrying out the Project.
“Form of Agreement”	The contract document signed by all the parties.
“Income”	Any revenues received by the Contractor (including without limitation the sale or disposal of products or services, royalties, payments for licences or options and stage payments) irrespective of whether such payment is in money or other consideration, arising from the use or exploitation of the Results or any part of the Results.
“Intellectual Property”	Any patent, copyright, design right, registered design, trademark or service mark, trade name, Know-how, patentable invention for the purposes of the Patents Act 1977, database right for the purposes of the Copyright and Rights in Databases Regulations 1997, domain name, technical information or know how and any application for any of the foregoing and any similar rights in any jurisdiction.
“Key Personnel”	Any member of the Contractor’s personnel identified by name or job title as key personnel in the Contacts Schedule.
“Know-how”	All information not in the public domain held in any form (including, without limitation, that comprised in or derived from oral and written instructions, diagrams, drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals,

	brochures, catalogues and process descriptions and scientific approaches and methods) used in connection with or arising as a result of the Project.
“Parties”	The Authority, the Contractor and the Co-funders.
“Period for the Project”	The period for the carrying out of the Project, being the period between the Date for Commencement and the Date for Completion.
“Project”	The research project particulars of which are set out in The Specification.
“Project Year”	Each period of 12 months during the Period of the Project calculated from the Date for Commencement.
“Proposal”	The application or tender submitted by the Contractor containing his proposals for the Project.
“Results”	Any Intellectual Property created by agents, employees, students or sub-contractors of the Contractor as a result of the Project.
“Schedule”	Any of the schedules annexed to the Agreement.
“Authority’s Representative”	The person named in paragraph 1 of the Contacts Schedule, subject to the provisions of condition 5.
“Terms and Conditions”	The Defra Standard Terms and Conditions for Research and Development Contracts.

- 1.2 Unless the context otherwise requires, references in these Terms and Conditions:
- 1.2.1 to the Contractor or to the Authority or to the Co-funders shall, where appropriate, be references to any lawful successor, assignee or transferee;
 - 1.2.2 to the Contractor shall, where appropriate, be references to each individual person constituting the Contractor;
 - 1.2.3 to the Co-funders shall, where appropriate, be references to each individual person constituting the Co-funders. Where there are no Co-funders, references to the Co-funders shall have no meaning or effect;
 - 1.2.4 to conditions are references to the conditions of these Terms and Conditions;
 - 1.2.5 to "person" or "third party" include any individual, company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency, whether or not having a separate legal personality;
 - 1.2.6 to one gender include all genders, and references to the singular include the plural and vice versa;
 - 1.2.7 to any statute, statutory provision or regulation, are references to that statute, statutory provision or regulation, as from time to time amended, extended or re-enacted.
- 1.3 The headings in this document are for convenience only, and shall be ignored in construing these Terms and Conditions.

2. **DURATION**

- 2.1 The Contractor shall commence work on the Project no later than the Date for Commencement.
- 2.2 The Contractor shall complete the Project by the Date for Completion.
- 2.3 Subject to the Authority's right of termination, the Agreement shall remain in force from the Date for Commencement until the Date for Completion, unless the Parties agree to extend the duration of the Agreement.

3. **PAYMENT**

- 3.1 Payment shall be made in accordance with the provisions of the Pricing Schedule.
- 3.2 The Contractor shall submit any invoices required in accordance with the Pricing Schedule to the address given in paragraph 1.4 of the Contacts Schedule.

4. **PAYMENT OF SUB-CONTRACTORS**

- 4.1 Where the Contractor enters into a sub-contract for the provision of services as part of the Project, the Contractor shall ensure that a term is included in the sub-contract which requires the Contractor to pay all sums due to the sub-contractor within a specified period not exceeding 30 days after the Contractor has verified the relevant invoice.
- 4.2 The Contractor shall use all reasonable endeavours to verify the invoices promptly.

4.3 Where the Contractor becomes liable to pay interest payments to a sub contractor under the provisions of the Late Payments of Commercial Debts (Interest) Act 1998, the Authority will not reimburse those costs unless they are incurred due to the negligence or default of the Authority.

5. **NOMINATED OFFICERS**

5.1 The Authority's Representative shall be the person named in paragraph 1.1 of The Contacts Schedule, or such other person that the Authority may nominate having given 14 days notice to the Contractor and the Co-funders.

5.2 The Contractor's Representative shall be the person named in paragraph 2.1 of The Contacts Schedule, or such other person that the Contractor may nominate having given 14 days notice to the Authority and the Co-funders.

5.3 The Co-funders' Representative shall be the person or persons named in paragraph 3.1 of The Contacts Schedule, or such other person that the Co-funders may nominate having given 14 days notice to the Authority and the Contractor.

6. **CONTRACTOR'S STATUS**

6.1 In carrying out the Project, the Contractor shall be acting as principal and not as agent or employee of the Authority or Co-funders. Accordingly:

6.1.1 The Contractor shall not (and shall ensure that any other person engaged in relation to the Agreement shall not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of the Authority or Co-funders, and

6.1.2 Nothing in the Agreement shall impose any liability of the Authority or Co-funders in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Authority or Co-funders to the Contractor that may arise by virtue of either a breach of the Agreement or any negligence on the part of the Authority or Co-funders, their staff or agents.

7. **WARRANTIES**

7.1 The Contractor warrants to the Authority and to the Co-funders that:

7.1.1 the Contractor shall carry out and shall ensure that his employees, agents and sub-contractors also carry out the Project with all reasonable skill, care and due diligence, in accordance with best professional, technical and scientific knowledge and practice, and any legislative requirements;

7.1.2 any materials or processes used in connection with the carrying out of the Project shall be in accordance with standards set out in the Agreement;

7.1.3 the proper use by the Authority and any Co-funders or any Crown body of any documentation, materials or results delivered by the Contractor pursuant to the Agreement, shall not to the best of the Contractor's knowledge and belief, constitute an infringement of the Intellectual Property rights of any third party. The Contractor warrants to the Authority and to the Co-funders to undertake appropriate patent, registered design right, trade mark, and/or literature

searches to identify any actual or potential third party Intellectual Property rights;

7.1.4 the Contractor has understood the nature and extent of the Project to be carried out and satisfied himself in relation to all matters connected with the project including the supply of and conditions affecting labour, the suitability of the premises where the project is to be carried out and any Equipment necessary for the carrying out of the Project subject to all such matters being reasonably discoverable by the Contractor.

7.2 Nothing in this Agreement shall be taken as limiting or excluding the Authority's or the Co-funders' rights or the Contractor's obligations pursuant to any statute, statutory instrument or the common law.

8. MEETINGS

The Contractor shall, subject to reasonable notice, attend all meetings specified in the Agreement or otherwise arranged by the Authority, for the discussion of matters concerned with the Project.

9. LIMITATION OF LIABILITY

9.1 In the event of any breach or breaches of this Agreement by the Authority or by the Co-funders, neither the Authority nor the Co-funders shall be liable to the Contractor in respect of any resulting:

9.1.1 loss of profit, business, revenue, goodwill or anticipated savings;

9.1.2 indirect or consequential loss or damage.

9.2 The aggregate liability of the Authority to the Contractor, or of the Co-funders to the Contractor, arising out of any breach or breaches of this Agreement shall in respect of the Authority be limited to the sum identified against it in The Pricing Schedule and in respect of the Co-funders be limited to the sums identified against each of them in The Pricing Schedule of the total sum to be paid to the Contractor set out in The Pricing Schedule.

10. INDEMNITY AND INSURANCE

10.1 The Contractor shall indemnify the Authority, the Crown, its employees, agents and contractors, and the Co-funders, on demand from and against all liability for:

- (a) death or personal injury;
- (b) loss of or damage to property (including property belonging to the Crown or the Authority, or for which it is responsible "Authority Property");
- (c) breach of statutory duty; and
- (d) actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis)

which arises out of or in connection with the provision of the Project.

10.2 The indemnity contained in Condition 10.1 shall not apply to the extent that:

- (a) any loss, damage injury, cost and expense is caused by the negligent or wilful act or omission of the Authority, its employees, agents or contractors, or Co-funders, or by the breach by the Authority, or Co-funders, of their obligations under the Agreement; or
 - (b) the Contractor is able to demonstrate that the loss, damage or injury arose as a direct result of the Contractor acting on the instructions of the Authority.
- 10.3 The Contractor shall, with effect from the Date for Commencement for such period as necessary to enable the Contractor to comply with his obligations under Condition 10.1, take out and maintain (and shall require any sub contractor to take out and maintain) insurance with a reputable insurance company, including (but not limited) to employer's liability, public liability and professional indemnity insurance, covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in such sum as may be specified in the Agreement, or, if no such sum is specified, the sum of not less than £5,000,000 for any one incident and unlimited in total.
- 10.4 The policy or policies of insurance referred to in paragraph 10.3 shall be shown to the Authority's Representative whenever he requests, together with satisfactory evidence of payment of premiums.
- 10.5 No party to the Agreement shall take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.
- 10.6 The Authority may, at its sole discretion, waive the requirement for insurance, in whole or part (other than that required by law), where the Contractor is able to provide a suitable guarantee that the Contractor can meet any liabilities for which indemnities are provided under Condition 10.1.

11. MONITORING OF PROGRESS AND ACCESS TO DOCUMENTS

- 11.1 In order to monitor the Contractor's performance of the Project, the Authority or its representative (which for these purposes may include the Comptroller and Auditor General and any of his representatives) or his servants or agents, or the Co-funders by their servants or agents, may enter into and inspect at all reasonable times and, save where the Authority or the Co-funders have good reason not to give any notice, on reasonable notice, all facilities (whether at the Contractor's premises or elsewhere) used by the Contractor in its performance of its obligations under the Agreement.
- 11.2 The Contractor agrees that the Authority and the Co-funders shall be entitled to audit the Contractor's performance of the Project and inspect at all reasonable times and, save where the Authority or the Co-funders have good reason not to give any notice, on reasonable notice, any and all records of the Contractor connected with its activities under the Agreement.
- 11.3 The Contractor agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Project.

- 11.4 The Contractor shall retain or ensure that it has access to all records which relate to the Project. On completion of the Project, or in the event that the Agreement is terminated pursuant to condition 23 or otherwise, the Contractor shall at the direction of the Authority either retain or transfer to the Authority those records required by the Authority, or, where such records are in the possession of any third party, procure that the same is done. If the Authority requires the Contractor to transfer the records to it or to any third party, the Contractor shall be entitled to retain a copy of them.
- 11.5 For a period not less than 3 years after the completion of the Project or, where relevant, its termination, the Contractor shall retain in its possession all records and documentation relating to the Project unless they have been transferred to the Authority or a third party in accordance with condition 11.4 above.
- 11.6 The Contractor shall permit duly authorised agents of the Authority and/or the National Audit Office or European Court of Auditors to examine the Contractor's records and documents relating to the Agreement and to provide such copies and oral or written explanations as may reasonably be required.
- 11.7 This condition does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under section 6(3) and 6(5) of the National Audit Act 1983.

12. CONTRACTOR'S PERFORMANCE AND PERSONNEL

- 12.1 The Contractor shall properly manage and monitor the Project and immediately inform the Authority if any aspect of the Agreement is not being or is unable to be performed.
- 12.2 The Contractor shall provide all the necessary facilities and Equipment necessary to complete the Project.
- 12.3 The Contractor shall deploy sufficient personnel of appropriate qualifications, competence and experience to complete the Project to time and shall ensure that those personnel are properly managed and supervised.
- 12.4 The Contractor shall give the Authority, if so requested, such particulars as the Authority may reasonably require of all persons who are or may be at any time employed on the Project.
- 12.5 If, after due consultation with the Contractor, the Authority gives the Contractor notice that any person or Equipment is to be removed from involvement in the Project, the Contractor shall take immediate steps to comply with such notice and such decision of the Authority shall be final and conclusive.
- 12.6 The Contractor shall take all reasonable steps to avoid any changes of Key Personnel, but where the Contractor considers it necessary to do so, he will give the Authority not less than one month's notice of any intention to change any Key Personnel and the reasons for such change.

13. UNSATISFACTORY PERFORMANCE

- 13.1 Where in the reasonable opinion of the Authority the Contractor has failed to:
- 13.1.1 comply with any of the warranties in Condition 7;

13.1.2 fulfil his obligations under the Reports and Intellectual Property Schedules; or

13.1.3 progress the Project in accordance with the Specification,

the Authority may give the Contractor a notice specifying the way in which his performance falls short of the requirements of the Contract, or is otherwise unsatisfactory.

13.2 Where the Contractor has been notified of a failure in accordance with Condition 13.1 the Authority may:

(a) direct the Contractor, to remedy the failure at his own expense within such time as may be specified by the Authority; and/or

(b) withhold or reduce payments to the Contractor, in such amount as the Authority reasonably deems appropriate in each particular case.

13.3 If, having been notified of any failure, the Contractor fails to remedy it in accordance with Condition 13.2, the Authority may treat the continuing failure as a material breach of the Agreement.

14. **UNLAWFUL DISCRIMINATION**

The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, the Sex Discrimination Acts 1975 and 1986 and Disability Discrimination Act 1995, or any statutory modification or re-enactment thereof relating to discrimination in employment. The Contractor shall take all reasonable steps to secure the observance of these provisions and any other relevant statutory employment protection obligations by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Agreement.

15. **HEALTH AND SAFETY**

In carrying out the Project, the Contractor shall comply with best practice and all relevant provisions, whether statutory or otherwise, relating to health and safety at work and shall ensure that any person engaged in relation to the Agreement also so complies, and shall produce evidence of such compliance, if asked by the Authority to do so.

16. **CORRUPT GIFTS AND PRACTICES (INCLUDING PAYMENTS OF COMMISSION)**

16.1 The attention of the Contractor is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916. The Contractor shall not do (and warrants that in entering into the Agreement he has not done) any of the following:

16.1.1 solicit, receive or agree to receive from any person or offer give or agree to give any person or procure for any person any gift or consideration of any kind as an inducement, advantage or reward for doing or not doing anything or for showing favour or disfavour to any person in relation the Agreement or any other contract with the Crown;

16.1.2 enter into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, unless, before the Agreement is made, particulars of any such

commission and of the terms and conditions of any such agreement for the payment of it have been disclosed in writing to the Authority.

17. CONFLICT OF INTEREST

- 17.1 The Contractor shall ensure that there is no conflict of interest as to be likely to prejudice his impartiality and objectivity in performing the Project and undertakes that upon becoming aware of any such conflict of interest during the performance of the Project (whether the conflict existed before the award of the Agreement or arises during the performance of the Project) he shall immediately notify the Authority in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Authority may reasonably require.
- 17.2 Where the Authority is of the opinion that the conflict of interest notified to it under Condition 17.1 is capable of being avoided or removed, the Authority may require the Contractor to take such steps as are necessary to avoid or remove the conflict at the Contractor's expense.
- 17.3 If the Contractor fails to avoid or remove the conflict the Authority may terminate the Agreement and recover from the Contractor the amount of any loss resulting from such termination.
- 17.4 Where the Authority is of the opinion that the conflict of interest which existed at the time of the award of the Agreement could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed, the Authority may terminate the Agreement immediately for breach of a fundamental condition and, without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such termination.

18. PUBLICATION AND DISCLOSURE

- 18.1 Subject to the provisions of conditions 18.3, 18.4 and 18.6, the Contractor shall endeavour to make information about, and results from the Project generally available, and may do so provided he acknowledges in any public statement the financial support of the Authority and of the Co-funders.
- 18.2 Subject to the requirements of the Reports Schedule, the Authority shall have the right to disclose, copy or otherwise distribute to the public or use in any way any information arising out of the Project or comprised in any work relating to the Project, as it sees fit.
- 18.3 Where the Project, or any matter related to it, has been identified as being sensitive by:
- 18.3.1 the Contractor or the Co-funders, or
- 18.3.2 the Authority, as notified in writing to the Contractor or the Co-funders,
- the Contractor or the Co-funders shall give written notice to be received by the Authority at least 10 working days before any planned public statement or other disclosure relating to the Project, providing details of the information proposed to be disclosed, the reason, and the medium of disclosure.

- 18.4 The Contractor or Co-funders shall notify the Authority immediately if approached by the media about the Project. The Contractor or Co-funders shall notify the Authority immediately if approached by anyone about a matter related to the Project which is considered sensitive by the Contractor or the Co-funders, or by the Authority as notified to the Contractor or Co-funders in accordance with condition 18.3.2.
- 18.5 For the avoidance of doubt, the notifications required by conditions 18.3 and 18.4 are for the purposes of informing the Authority or the Contractor or Co-funders (as the case may be) and are not designed to interfere with the issue of any public statement.
- 18.6 Where the carrying out of the Project results in, or materially contributes to, the creation of Intellectual Property which the Contractor or the Authority considers may be suitable for commercial exploitation no disclosure of information may be made by the Contractor or the Co-funders which would jeopardise such exploitation.
- 18.7 The Parties acknowledges that, in order to be compliant with the Freedom of Information Act 2000, the Environmental Information Regulations 2004, or any other applicable legislation governing access to information (the "FOI Legislation"), the Parties may be obliged to provide information, on request, to third parties that relates to this Agreement.
- 18.8 In the event that any of the Parties receives a request for information relating to the Agreement falling within the scope of the FOI Legislation, that Party shall be entitled to disclose such information as necessary in order to ensure its compliance with the FOI Legislation. Where a Party reasonably considers that information is exempt from disclosure, it shall use reasonable endeavours to consult with the other Parties.
- 18.9 In the event that any of the Parties requires the other Parties' assistance in supplying any information falling within the scope of the FOI legislation that is held or controlled by a Party or any other person engaged in relation to the Agreement, the disclosing Party will provide such assistance, at its own cost within ten (10) days of receiving the request.
- 18.10 A Party shall not be liable for any loss, damage, harm or other detriment suffered by the other Parties arising from the disclosure of any information falling within the scope of the FOI Legislation.

19. **DATA PROTECTION**

The Contractor shall take such appropriate technical and organisational measures as are necessary to comply with the seventh data protection principle as provided by Part I of the Data Protection Act 1998 to protect against unauthorised or unlawful processing of personal data (as defined in section 1(1) of the Data Protection Act 1998) and against accidental loss or destruction of, or damage to, personal data.

20. **AUTHORITY'S PROPERTY**

- 20.1 The Authority's Property shall include any property owned by the Authority including any item of equipment costing in excess of £2,000 which will yield continuous service for at least one year, for which the Authority has reimbursed the Contractor.
- 20.2 The Authority's Property shall remain the property of the Authority and shall be used in the performance of the Agreement and for no other purpose without prior approval of the Authority.

- 20.3 The Contractor shall ensure that the title in the Authority's Property is brought to the attention of any third party dealing with the Authority's Property.
- 20.4 On receipt of the Authority's Property, the Contractor shall subject it to a visual inspection and such additional inspection and testing as may be necessary to check that it is not defective. If the Contractor discovers any defect, he shall notify the Authority within 14 days of receipt of the Property, or such other period as may be agreed with the Authority. The Authority shall, within 14 days of receiving such notification, inform the Contractor of the action to be taken
- 20.5 The Authority shall be responsible for the repair or replacement of its Property unless the need for repair or replacement is caused by the Contractor's failure to comply with Condition 20.4, or by the negligence or default of the Contractor.
- 20.6 The Contractor shall maintain all items of the Authority's Property in good and serviceable condition (fair wear and tear excepted), and in accordance with the manufacturer's recommendations.
- 20.7 The Contractor shall be liable for any loss of or damage to any of the Authority's Property unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Authority.
- 20.8 The Authority shall have the right to require the Contractor either to pass the Authority's Property into the Authority's possession or to dispose of it. In the latter event, the Contractor shall pass to the Authority any monies realised by the disposal.

21. EQUIPMENT

- 21.1 All Equipment purchased by the Contractor for use on the Project shall, where reasonably practicable, be acquired by competitive tender.
- 21.2 Unless otherwise agreed in writing with the Authority, the Contractor shall provide the Equipment necessary for the provision of the Project.
- 21.3 The Contractor shall maintain all items of Equipment in good and serviceable condition.
- 21.4 All Equipment shall be at the risk of the Contractor and the Authority shall have no liability for any loss of or damage to any Equipment except to the extent that the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Authority.

22. INFRINGEMENT OF INTELLECTUAL PROPERTY

- 22.1 Each Party shall inform the other Party promptly if it becomes aware of any infringement or potential infringement of any of the Intellectual Property rights, and the Parties shall consult with each other to decide the best way to respond to such infringement.
- 22.2 If any warning letter or other notice of infringement is received by a party, or legal suit or other action is brought against a party, alleging infringement of third party rights in the manufacture, use or sale of any licensed product or use of any patents or Intellectual Property rights, that party shall promptly provide full details to the other party, and the parties shall discuss the best way to respond.

22.3 The Contractor shall indemnify the Authority and keep the Authority fully and effectively indemnified against all claims, damages or losses arising from or incurred by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement in the United Kingdom) of any Intellectual Property rights in connection with the use, exercise or commercial exploitation of the Results (other than where any such claim arises as a result of the Authority's negligence or wilful default).

23. TERMINATION

23.1 The Contractor shall notify the Authority and Co-funders in writing immediately upon the occurrence of any of the following events:

(a) being an individual:-

is the subject of a bankruptcy order; or

has made a composition or arrangement with his creditors;

(b) being a company :-

goes into compulsory winding up; or

passes a resolution for voluntary winding up; or

suffers an administrator, administrative receiver or receiver and manager to be appointed or to take possession over the whole or any part of its assets;

has entered into a voluntary arrangement with its creditors under Part I of the Insolvency Act 1986, or has proposed or entered into any scheme of arrangement or composition with its creditors under section 425 of the Companies Act 1985 ; or

has been dissolved;

(c) being a partnership or unregistered company :-

goes into compulsory winding up; or

is dissolved; or (in the case of a partnership only)

suffers an administrator or receiver and manager to be appointed over the whole or any part of its assets ; or

has entered into a composition or voluntary arrangement with its creditors; or

any individual member of the partnership falls within Condition 23.1(a) above;

(d) Or is in any case affected by any similar occurrence to any of the above in any jurisdiction.

- 23.2 On the occurrence of any of the events described in condition 23.1 or, if the Contractor shall have committed any of the following:
- 23.2.1 a material breach of the Agreement and (if such breach is capable of remedy) shall have failed to remedy such breach within thirty days of being required by the Authority in writing to do so;
 - 23.2.2 where the Contractor is an individual, if he shall die or be judged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983,
- the Authority shall be entitled to terminate this Agreement by notice to the Contractor with immediate effect and without compensation to the Contractor.
- 23.3 In the event that the Co-funders:
- 23.3.1 fail to make any payment in accordance with The Pricing Schedule ; or
 - 23.3.2 repudiate the Agreement;
- the Authority may issue a notice to the Contractor in accordance with condition 30.1, identifying the default of the Co-funders, and, without prejudice to any other rights or remedies, terminating the Agreement with immediate effect.
- 23.4 Without prejudice to the provisions of this condition, either Party may submit a request to the other Party to withdraw from the Agreement. The Agreement may be terminated by written agreement between the Contractor and the Authority and the Co-funders at any time.
- 23.5 Where the Authority is the sole funder, and without prejudice to the other provisions of this condition, the Authority may, at any time, terminate the Agreement by giving the Contractor not less than 30 days written notice.
- 23.6 The Authority may, during any notice period direct the Contractor:
- 23.6.1 to refrain from commencing the Project;
 - 23.6.2 to cease work immediately; or
 - 23.6.3 to complete, in accordance with Agreement, any part of the Project, which shall be paid at the agreed price or, where no agreement exists as to price, a fair and reasonable price.
- 23.7 Except as expressly provided in this Agreement, termination of the Agreement shall not affect:
- 23.7.1 any obligation or liability of any Party which has accrued at the date of termination;
 - 23.7.2 any of the provisions of this Agreement which are intended to continue to have effect after the Agreement has been terminated including without limitation the obligations contained in the Intellectual Property Schedule.

24. PAYMENT ON TERMINATION

24.1 Without prejudice to any other rights or remedies of the Authority or of the Co-funders, in the event of the Agreement being terminated:

24.1.1 by the Authority in accordance with condition 23 by reason of the default of the Contractor; or

24.1.2 otherwise by reason of the Contractor's breach of the Agreement;

neither the Authority nor the Co-funders shall be under any obligation to make any payment to the Contractor for such period as is reasonable for the Authority and the Co-funders to assess the loss and/or damage suffered as a result of the termination.

24.2 After such period, and except where the Agreement has been terminated pursuant to condition 23.3, the Authority and the Co-funders may set off against any sums otherwise due to the Contractor, or recover as a debt, the amount of loss and/or damage the Authority and/or the Co-funders have reasonably assessed as resulting from the termination of the Agreement.

24.3 Where the Agreement is terminated by the Authority in accordance with condition 23.5, the Contractor shall be entitled to claim from the Authority reimbursement of all reasonable costs necessarily and properly incurred by him in relation to the orderly cessation of the Project, including any commitments, liabilities or other expenditure unavoidably incurred as a result of the termination of the Agreement, but excluding loss of profits. The liability of the Authority under this condition shall not exceed the total sums payable for the Project, as set out in the Pricing Schedule.

24.4 Any overpayment by the Authority or Co-funders to the Contractor, whether of the agreed price or Value Added Tax, shall be a sum of money recoverable by the Authority or Co-funders from the Contractor.

25. MERGER, TAKEOVER OR CHANGE OF CONTROL

The Contractor shall forthwith inform the Authority and Co-funders in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status, including, where the Contractor is a company as defined in the Companies Act 1985, any change in "control" as defined in Section 416 of the Income and Corporation Taxes Act 1988.

26. TRANSFER OF RIGHTS AND OBLIGATIONS

26.1. The Contractor shall not sub-contract, transfer, assign, charge, or otherwise dispose of the Agreement or any part of it without the prior written consent of the Authority and Co-funders.

26.2. The Contractor shall ensure, if so requested by the Authority, that an assignee enters into a novation agreement with the Authority and Co-funders to perform the Agreement as if the assignee were a party to the Agreement in lieu of the Contractor.

26.3. The Contractor shall ensure that any sub-contractor complies with the terms and Conditions of the Agreement, so far as they are applicable and shall provide to the Authority, at its request copies of any sub-contracts. Any sub-contract shall not relieve the Contractor of his obligations under the Agreement.

26.4. The Authority and/or the Co-funders may at any time, on written notice to the Contractor, transfer or assign all or any rights and/or obligations under the Agreement.

27. RIGHTS OF THIRD PARTIES

For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to, and does not give any person who is not a party to it any right to enforce any of its provisions.

28. WAIVER AND VARIATION

28.1 The failure of the Authority, the Co-funders or the Contractor to exercise any right or remedy shall not constitute a waiver of that right or remedy.

28.2 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

28.3 No waiver shall be effective unless it is communicated to either the Authority or the Contractor in writing.

28.4 Any variation of any provision of this Agreement must be effected in writing and issued by the Authority. No purported variation by any other means shall bind the Authority or the Co-funders.

29. SEVERANCE

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

30. NOTICES

30.1 Any notice required to be given under, or any communication between the parties with the respect to any of the provisions of the Agreement shall be in writing in English and shall be deemed duly given if signed by or on behalf of a duly authorised officer of the party giving the notice and if left at, or sent by pre-paid registered or recorded delivery post, or by facsimile transmission or other means of electronic telecommunication in permanent written form to the address of the receiving party as specified in the Agreement (as or amended from time to time by due notice in writing to other party):-

30.2 Any such notice or other communication shall be deemed to have been given and received by the addressee:-

30.2.1 at the same time as it is left at the address of or handed to a representative of the party to be served;

30.2.2 by post on the day (not being a Sunday or public holiday two days following the date of posting);

30.2.3 in the case of a facsimile or email or other type of electronic telecommunication on the day following despatch.

30.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was correctly addressed and was posted, or that the facsimile or e-mail or other form of electronic communication was correctly addressed and was despatched and despatch of the transmission was confirmed and (in the case of a facsimile) confirmed as having been sent to the number above with all pages successfully transmitted.

31. **SPECIAL PROVISIONS**

Subject to paragraph 9 of the Form of Agreement, in the case of any conflict or inconsistency between these Terms and Conditions and any conditions contained within the Form of Agreement or the Schedules, the latter conditions shall prevail.

32. **ENTIRE AGREEMENT**

The Agreement and any variation made in accordance with condition 28 sets out the entire agreement between the parties and supersedes any prior agreement whether formal or informal and whether legally within the Agreement.

33. **LEGAL RELATIONSHIP**

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

34. **DISPUTE RESOLUTION**

34.1 The Parties shall in good faith attempt to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement.

34.2 If any such dispute cannot be resolved in accordance with condition 34.1, the relevant Parties shall consider referring the matter to mediation in accordance with condition 34.3.

34.3 The procedure for mediation shall be as follows:

34.3.1 a neutral person ("the Mediator") shall be chosen by agreement between the relevant Parties, alternatively, any Party may within 14 days from the date of the proposal to appoint a mediator, or within 14 days of notice to any Party that the chosen mediator is unable or unwilling to act, apply to the Centre for Dispute Resolution ("CEDR") to appoint a mediator;

34.3.2 the relevant Parties shall within 14 days of the appointment of the Mediator meet with him or her to agree a timetable for the exchange of all relevant and necessary information and the procedure to be adopted for the mediation. If appropriate, the relevant Parties may at any stage seek from CEDR guidance on a suitable procedure;

34.3.3 unless otherwise agreed, all negotiations and proceedings in the mediation connected with the dispute shall be conducted in strict confidence and shall be without prejudice to the rights of the relevant Parties in any future proceedings;

34.3.4 if the relevant Parties reach agreement on the resolution of the dispute, that agreement shall be put in writing and shall be binding upon the relevant Parties;

34.3.5 failing agreement, any relevant Party may invite the Mediator to provide a non-binding but informative opinion in writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the dispute without the prior written consent of the relevant Parties.

34.4 For a period of sixty days from the date of the appointment of the Mediator, or such other period as the relevant Parties may agree, none of the Parties to the dispute may commence any proceedings in relation to the matters referred to the Mediator.

35. **OFFICIAL SECRETS ACT**

The Contractor shall take all reasonable steps to ensure that any persons employed by him or by any sub-contractor in connection with the Project are aware of the Official Secrets Acts 1911 to 1989, and that these Acts apply to them during and after performance of any services under or in connection with the Agreement.

36. **RE-TENDERING AND HANDOVER**

36.1 Within 21 days of being so requested by the Authority's Representative, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Project.

36.2 Where, in the opinion of the Authority, the Transfer of Undertakings (Protection of Employment) Regulations 1981 are likely to apply on the termination or expiration of the Contract, the information to be provided by the Contractor under Condition 36.1 shall include, as applicable, accurate information relating to the staff who would be transferred under the same terms of employment under those Regulations, including in particular:

36.2.1 the number of staff who would be transferred, but with no obligation on the Contractor to specify their names;

36.2.2 in respect of each of those members of staff their age, sex, salary, length of service, hours of work, overtime hours and rates, any other factors affecting redundancy entitlement and any outstanding claims arising from their employment;

36.2.3 the general terms and conditions applicable to those members of staff, including probationary periods, retirement age, periods of notice, current pay agreements, working hours, entitlement to annual leave, sick leave, maternity and special leave, terms of mobility, any loan or leasing schemes, any relevant collective agreements, facility time arrangements and additional employment benefits.

36.3 The Authority shall take all necessary precautions to ensure that the information referred to in Conditions 36.2 is given only to service providers who have qualified to tender for the future provision of the Project.

- 36.4 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.
- 36.5 The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Contractor is required to provide under Condition 36.2
- 36.6 The Contractor shall not –
- 36.6.1 at any time during the Agreement, including any extension, move any staff into the undertaking or relevant part of the undertaking which provides the Project, who do not meet the standards of skill and experience, or who are in excess of the number, required for the purposes of the Agreement; or
- 36.6.2 make any substantial change in the terms and conditions of employment of any staff engaged in providing the Project, which is inconsistent with the Contractor's established employment and remuneration policies.
- 36.7 Where, in the opinion of the Authority, any change or proposed change in the staff employed in the undertaking or relevant part of the undertaking, or any change in the terms and conditions of employment of such staff, would be in breach of Condition 36.6 the Authority shall have the right:
- 36.7.1 to make representations to the Contractor against the change or proposed change;
- 36.7.2 to give notice to the Contractor requiring him to remedy the breach within 30 days; and
- 36.7.2 if the Contractor has not remedied the breach to the satisfaction of the Authority by the end of the period of 30 days, to terminate the Agreement by reason of the default of the Contractor, in accordance with Condition 23.2.
- 36.8 The Contractor shall allow access to his premises, in the presence of the Authority's Representative, to any person representing any potential provider whom the Authority has selected to tender for the future provision of the Project.
- 36.9 For the purpose of access to the premises in accordance with Condition 36.8, the Authority shall give the Contractor 7 days' notice of a proposed visit together with a list showing the names of all persons who will be attending those premises. Their attendance shall be subject to compliance with the Contractor's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- 36.10 The Contractor shall co-operate fully with the Authority during the handover arising from the completion or earlier termination of the Agreement. This co-operation, during the setting up operations period of the new Contractor, shall extend to allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.

36.11 Within 10 working days of being so requested by the Authority's representative, the Contractor shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Project. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

37. OCCUPATION OF GOVERNMENT PREMISES

Any land or premises (including temporary buildings) made available to the Contractor by the Authority in connection with the Agreement shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purposes of performing the Agreement. The Contractor shall have the use of such land or premises as licensee and shall vacate the same upon completion or determination of the Agreement. Any utilities required by the Contractor shall be subject to such charges as are set out elsewhere in the Agreement.

38. ENVIRONMENTAL REQUIREMENTS

38.1 The Contractor shall perform the Agreement in accordance with the Department's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

38.2 The Contractor shall pay due regard to the use of recycled products, so long as they are not detrimental to the provision of the Project or the Environment, to include the use of all packaging, which should be capable of recovery for re-use or recycling.

38.3 The Contractor shall take all possible precautions to ensure that any equipment and materials use in the provision of the Project do not contain chlorofluorocarbons, halons or any other damaging substances, unless unavoidable, in which case the Authority shall be notified in advance of their use.

38.4 All written work in connection with the Agreement shall (unless otherwise agreed with the Authority) be produced on recycled paper containing at least 80% post consumer waste and used on both sides where appropriate.

39. GOVERNING LAW

The Agreement shall be governed by and interpreted in accordance with English law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Authority take proceedings against the Contractor in any other court of competent jurisdiction, nor shall the taking of proceedings in any other court of competent jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

INTELLECTUAL PROPERTY SCHEDULE

INTELLECTUAL PROPERTY RIGHTS VESTED IN THE CONTRACTOR

Ownership and protection

1. Subject to the Contractor complying with the Terms and Conditions, any prior rights and the rights of third parties, all rights in relation to the Results shall be vested in the Contractor. Where the Contractor is a Crown body, any copyright shall vest in the Crown.
2. The Contractor shall:
 - 2.1 ensure that all his staff, students and sub-contractors are and will be engaged in relation to the Agreement and the Project on terms which vest all rights in Results in the Contractor.
 - 2.2 continue to report to the Secretary of State at regular intervals (and in any case at least once in every Project Year for so long as the Results are capable of or are being exploited) on the progress of commercial exploitation of the Results and on any assignment or licence of the Results;
 - 2.3 do all things and execute at the Secretary of State's expense any documents reasonably required to give effect to such vesting or assignment/licensing in the Secretary of State as is necessary to give effect to paragraph 12.

Licence back

3. The Contractor hereby grants to the Secretary of State an irrevocable world-wide non-exclusive licence in perpetuity free of any charge or royalty to use the Results for:
 - 3.1 the purposes of paragraph 5 of the Reports Schedule;
 - 3.2 the purposes of Condition 18.2 of the Contract;
 - 3.3 any other Government purposes;and to sub-licence and sub-sub-licence the Secretary of State's rights on the same terms as the licence. The Contractor shall ensure that any such licence shall be binding on any successor, transferee or assignee of the Contractor.
4. Where such use of the Results by the Secretary of State or sub-licensees also requires a licence to use any Intellectual Property rights of the Contractor other than the Results, the Contractor shall grant such a licence, subject to existing third party rights, which shall be royalty-free where such use is for non-commercial purposes, but shall be on reasonable terms to be agreed between the Parties in good faith where such use is for commercial or revenue generating purposes.

Commercial exploitation

5. The Contractor will use his reasonable endeavours to exploit the Results commercially for his benefit and the benefit of the Secretary of State and the Co-funders.
6. In order to comply with Government policy:
 - 6.1 the Contractor shall identify and inform the Secretary of State of any Results which he considers suitable for commercial exploitation, and shall use reasonable endeavours to pursue or procure commercial exploitation thereof;
 - 6.2 the Contractor shall provide to the Secretary of State such information as the Secretary of State may reasonably require regarding commercial exploitation of the Results, including details of any licences to third parties granted in respect of the Results/Intellectual Property.
7. Subject to paragraph 12, the Contractor shall:
 - 7.1 identify and inform the Secretary of State of any Results which may be suitable for protection and exploitation;
 - 7.2 secure such protection for the Results in all or any part of the world, and shall maintain such protection as is necessary to promote commercial exploitation of the Results at his own expense; and
 - 7.3 inform the Secretary of State of any such Results so protected, and of any subsequent assignment or licence of such Results.
8. Subject to paragraph 9 and without prejudice to paragraph 12, and irrespective of whether the Contractor has assigned the Results, the Income from the commercial exploitation of the Results shall, after deduction of allowable costs as described in paragraph 10, be apportioned between the Parties as follows:
 - 8.1. The Secretary of State and Co-Funders, 10%, to be divided in the proportion of the actual payments made to the Contractor under the Agreement by the Secretary of State and Co-Funders respectively;
 - 8.2 The Contractor, 90%.
9. The income referred to in paragraph 8 shall be payable for the longer of:
 - 9.1 The term of any patent arising from or incorporating any of the Results; or
 - 9.2 The period in which any Know-How arising from the Results and used in any products or services exploited by the Contractor remains secret and substantial.
10. The allowable costs of the Parties, for the purposes of paragraph 8, shall not include any of the sums referred to in the Payment Schedule and shall be limited to:
 - 10.1 the registration fees for the registering or maintaining of any rights and any associated filing and prosecution costs in relation to such Results;
 - 10.2 any legal or other professional fees and costs reasonably incurred in relation to legal proceedings in relation to such Results in any appropriate forum and

before any appropriate tribunal in any country and any costs ordered by any such tribunal to be paid by the Parties or any of them;

- 10.3 any other reasonable cost or expenditure which may be agreed from time to time by the Secretary of State and the Contractor;
- 10.4 subject to the Secretary of State's prior agreement, any reasonable marketing, packaging and/or distribution costs, and any relevant experimental development costs including costs of field trials and/or demonstration projects incurred at the Contractor's expense.
11. The Contractor shall have sole responsibility for making any payments due to his employees, students or contractors under any rewards or incentive schemes, whether contractual, ex gratia, or statutory, in relation to the Results, and any such payments shall not be a cost or expenditure liable to be subtracted from any Income pursuant to paragraph 10 above.
12. If so requested by the Secretary of State, the Contractor will inform the Secretary of State, in writing, whether or not he intends to protect or exploit any part of the Results in any part of the world. If the Contractor does not intend to protect or exploit the Results but the Secretary of State desires such protection to be obtained or to carry out such exploitation then the Secretary of State shall be entitled to obtain such protection at his own cost and to have assigned at no charge any such part of the Results which the Contractor has given notice that he does not intend to pursue or no longer has interest in pursuing. The Contractor will not be entitled to any share of the income generated as the result of the exploitation of Intellectual Property by the Secretary of State.
13. The Contractor shall keep at its normal place of business detailed accurate and up to date records and accounts showing details of its commercial exploitation of the Results including the sale of products or services which incorporate the Results, Income received, allowable costs deducted and the amount of licensing revenues received by it in respect of the Results in a format sufficient to ascertain that revenue sharing pursuant to this Agreement has been properly accounted for and apportioned in accordance with this Agreement. The Contractor shall make such records and accounts available at its premises in the United Kingdom on reasonable notice for inspection during business hours by the Secretary of State or his representatives for the purpose of the verifying the accuracy of any statement or report given by the Contractor to the Secretary of State and to take copies and shall supply the Secretary of State or his representative with such explanation as he may request.
14. Subject to paragraph 12, the Contractor shall indemnify the Secretary of State and sub-licensees and keep them fully indemnified from and against any claims which they may sustain or incur, or which may be brought or established against any of them, by any person, and which in any case arise directly or indirectly out of or in relation to or by reason of:
 - 14.1 any instruction or advice given by the Contractor on how to apply the Results;
 - 14.2 the Contractors' or his licensee's or sub licensee's possession, operation, copying or use of the Results; or
 - 14.3 product liability rights arising out of any product developed from the Results or any work resulting in such a product (save to the extent that such liability

arises solely as a result of the acts of omissions of or on behalf of the Secretary of State or sub-licensee).

Miscellaneous

15. If the Contractor is unable to carry out his obligations or satisfy any requirements under the Agreement due to any infringement or alleged infringement of any Intellectual Property right which he cannot rectify within a reasonable period such inability shall be deemed a breach by the Contractor and the Secretary of State may without prejudice to any other rights and remedies exercise the powers and remedies available to him under Condition 23.
16. For the avoidance of doubt, and subject to the provisions of paragraph 4, the provisions of this Schedule do not apply to and do not affect any Intellectual Property in existence before the commencement of the Project.

INTELLECTUAL PROPERTY SCHEDULE

INTELLECTUAL PROPERTY RIGHTS RETAINED BY THE SECRETARY OF STATE

Ownership and Protection

1. Subject to any prior rights and the rights of third parties, including H M Comptroller General with regard to Crown Copyright, the Contractor hereby vests in the Secretary of State on behalf of the Crown as to copyright and in the Secretary of State absolutely as to every other property right, all rights in relation to the Results, including, but not limited to:
 - 1.1 the title in any patent in relation to such Intellectual Property;
 - 1.2 the right to apply for and/or register any patent pursuant to the Patents Act 1977;
 - 1.3 any database rights, for the purposes of the Copyright and Rights in Databases Regulations 1997.
2. The Contractor shall:
 - 2.1 ensure that all his staff, students and sub-contractors are and will be engaged in relation to the Agreement and the Project on terms which do not entitle any of them to copyright or any other rights in the Results;
 - 2.2 ensure that he is and remains entitled to transfer free from any encumbrances any title and/or rights necessary to effect the vesting required by this schedule;
 - 2.3 do all things and execute at the Contractor's expense any documents reasonably required to give effect to such vesting in the Secretary of State;
 - 2.4 co-operate with and assist the Secretary of State in obtaining and/or enforcing any and all rights in such Intellectual Property.

Commercial Exploitation

3. The Contractor will use his reasonable endeavours to exploit the Results commercially for his benefit and the benefit of the Secretary of State and the Co-funders.
4. The Contractor shall identify and inform the Secretary of State of any such Intellectual Property which he considers suitable for commercial exploitation. Where the Contractor has identified an opportunity for the commercial exploitation of the Intellectual Property he may either apply for a licence to himself with a right to sub-licence or provide such assistance as is required by the Secretary of State to facilitate a licence being granted by the Secretary of State to a third party.
5. The Contractor shall identify and inform the Secretary of State of any Intellectual Property which may be suitable for patent, copyright, Registered design, trademark or other legal protection and shall use his reasonable endeavours to apply for such protection throughout or in any part of the world in the name of the Secretary of

- State, and shall maintain such protection in such part of the world as he considers suitable at his own expense.
6. Subject to paragraph 7 and without prejudice to paragraph 10, the Income from the commercial exploitation of the Results shall, after deduction of allowable costs as described in paragraph 8, be apportioned between the Parties as follows:
 - 6.1 the Secretary of State and Co-Funders, 10%, to be divided in the proportion of the actual payments made to the Contractor under the Agreement by the Secretary of State and Co-Funders respectively;
 - 6.2 the Contractor, 90%.
 7. The income referred to in paragraph 6 shall be payable for the longer of:
 - 7.1 The term of any patent arising from or incorporating any of the Results; or
 - 7.2 The period in which any Know-How arising from the Results and used in any products or services exploited by the Contractor remains secret and substantial.
 8. The allowable costs for the purposes of paragraph 6 shall not include any of the sums referred to in the Payment Schedule and shall be limited to:
 - 8.1 the registration fees for the registering of any rights in relation to such Results;
 - 8.2 any legal costs reasonably incurred in relation to legal proceedings in relation to such Results in any appropriate forum and before any appropriate tribunal in any country and any costs ordered by any such tribunal to be paid by the Parties or any of them;
 - 8.3 any other reasonable cost or expenditure which may be agreed from time to time by the Secretary of State and the Contractor; and
 - 8.4 subject to the Secretary of State's prior agreement, any reasonable marketing, packaging and/or distribution costs, and any relevant experimental development costs including costs of field trials and/or demonstration projects incurred at the Contractor's expense.
 9. The Contractor shall have sole responsibility for making any payments due to his employees or contractors under any rewards or incentive schemes, whether contractual, ex gratia, or statutory, in relation to the Results, and any such payments shall not be a cost or expenditure liable to be subtracted from any Income pursuant to paragraph 8 above.
 10. Where the Contractor does not wish to protect the Intellectual Property or considers that Intellectual Property should not be protected in any part of the world but the Secretary of State desires such protection to be obtained then the Secretary of State shall be entitled to obtain such protection at his own cost. The Contractor will not be entitled to any share of the Profit generated as the result of the protection of Intellectual Property obtained by the Secretary of State.
 11. For the avoidance of doubt, the provisions of this schedule do not apply to and do not affect any Intellectual Property in existence before the commencement of the Project.