

(1) [.....]

(2) [.....]

(3) [.....]

(4) [.....]

**MODEL
CONSORTIUM AGREEMENT D**

(Each member of the Consortium owns the IP in the Results that it creates and grants each of the other parties a non-exclusive licence to use those Results for the purposes of the Project only.

The members of the Consortium do not have an agreed strategy for the exploitation of the Results. If any member of the Consortium wishes to exploit the IP in the Results or the IP in the Background of another member of the Consortium, it will have to negotiate a licence to allow it to exploit that IP or an assignment of that IP.

If an approach is made on that basis, the owner of the IP undertakes to negotiate with the member wishing to take a licence or assignment.

(This Agreement is not likely to be used for research funded by the Technology Strategy Board Collaborative R&D Programme where the parties should have an agreed exploitation strategy.)

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

- (1) [.....], whose administrative offices are at [.....] (**AAA University**);
- (2) [.....], whose administrative offices are at [.....] (**BBB University**);
- (3) [.....] [**LIMITED**], a company registered in [England] under number [.....], whose registered office is at [.....] (**XXX**); and
- (4) [.....] [**LIMITED**], a company registered in [England] under number [.....], whose registered office is at [.....] (**ZZZ**);

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:

an Academic Party	AAA University or BBB University;
Academic Publication:	the publication of an abstract, article or paper in a journal or electronic repository, its presentation at a conference or seminar, or its discussion in academic seminars, tutorials and lectures; and in clauses 6 and 7 "to Publish" and "Publication" are to be construed as references to Academic Publication;
this Agreement:	this document, including its Schedules, as amended from time to time in accordance with clause 11.9;
Background:	any information, techniques, Know-how, software and materials (regardless of the form or medium in which they are disclosed or stored) that are provided by one party to another for use in the Project (whether before or after the date of this Agreement), except any Result;
a Business Day:	Monday to Friday (inclusive) except bank or public holidays in [England];
a Commercial Party:	[XXX] or [ZZZ];
Confidential Information:	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;

- a Contribution:** the non-financial contribution (including, without limitation, human resources, materials, facilities and equipment) to be made by a party to the Project, as set out in the Project Plan;
- the Effective Date:** [*insert date the Project starts*];
- the External Funding:** [any funding or assistance provided for the Project or to any party for use in the Project by any third party, including without limitation, any state or public body;]
- a Financial Contribution:** the financial contribution to be made by a party to the Project, as set out in the Project Plan;
- the Funding Body:** [*insert details of body that provides the External Funding*];
- the Funding Conditions:** the terms on which the Funding Body provides any External Funding, copies of which are attached to this Agreement as Schedule 3;
- the Good Data Management Practices:** the practices and procedures set out in Schedule 5;
- a Group Company:** any undertaking which is, on or after the date of this Agreement from time to time, a subsidiary undertaking of any of the parties, a parent undertaking of any of the parties or a subsidiary undertaking of a parent undertaking of any of the parties, as those terms are defined in section 1162 of the Companies Act 2006;
- Intellectual Property:** patents, trade marks, service marks, registered designs, copyrights, database rights, design rights, know-how, confidential information, applications for any of the above, 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;
- Key Personnel:** in the case of AAA University: [??? and ???]; in the case of BBB University, [??? and ???]; in the case of XXX [???]; and in the case of ZZZ [???];
- Know-how:** unpatented technical information (including, without limitation, 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) that is not in the public domain;

the Lead Party: *[insert name of the lead party. (This should be consistent with the offer of External Funding)];*

the Location: the location(s) at which the Project will be carried out as set out in the Project Plan;

the Payment Plan: the arrangements under which each party, in return for its rights to exploit the Results, will pay the other parties, as set out in Schedule 6;]

the Project: the project described in the Project Plan;

the Project Manager: 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];

the Project Period: the period described in clause 2.1;

the Project Plan: 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];

the Results: all information, Know-how, results, inventions, software and other Intellectual Property identified or first reduced to practice or writing in the course of the Project; and

the Steering Committee: the individuals nominated by each of the parties [and the Funding Body] in accordance with clause 3.1 to supervise the carrying out of the Project.

1.2 Words and phrases defined in the Funding Conditions and not defined in this Agreement have the meaning given to them in the Funding Conditions when used in this Agreement.

1.3 If there is any conflict between the terms of this Agreement and the Funding Conditions, this Agreement will prevail in relation to the arrangements as between the parties, but it will not affect the parties' respective obligations to the Funding Body under the Funding Conditions.]

2. THE PROJECT

2.1 The Project [will begin on][began on] the Effective Date and will continue until [the earlier of the withdrawal of the External Funding,] the completion of the Project, or until any later date agreed in writing between the parties. If this Agreement is entered into after the Effective Date, it will apply retrospectively to work done in relation to the Project on or after the Effective 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 9 or 10.

- 2.2 Each of the parties undertakes to each of the others to:
- 2.2.1 make its Contribution to the Project in accordance with the Project Plan;
 - 2.2.2 comply with its obligations under, and the conditions of, the Funding Conditions;
 - 2.2.3 carry out the Project in accordance with the Funding Conditions; and
 - 2.2.4 notify each of the other parties in accordance with clause 11.1 immediately if it receives any notice or request from the Funding Body;
 - 2.2.5 carry out the tasks allotted to it in the Project Plan and provide the human resources, materials, facilities and equipment that are designated as its responsibility in the Project Plan; and
 - 2.2.6 use all reasonable endeavours to obtain all regulatory and ethical licences, consents and approvals necessary to allow it to make its Contribution to the Project and carry out the tasks allotted to it in the Project Plan; and
 - 2.2.7 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 and observations, signed by the people who obtained each Result or made those observations, 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.
- 2.3 Although each of the parties will use reasonable endeavours to carry out the Project in accordance with the Project Plan, no party undertakes that any research will lead to any particular result, nor does it guarantee a successful outcome to the Project.
- 2.4 Each of the parties warrants to each other party 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 this Agreement.

3. PROJECT MANAGEMENT

- 3.1 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 4 to this Agreement, and the Steering Committee has no authority to amend the terms of this Agreement except as may be expressly set out in those terms of reference.
- 3.2 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][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.

- 3.3 [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.
- 3.4 The parties will ensure that the Steering Committee meets at least every [3] 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 twenty-one (21) 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 14 days after each meeting.
- 3.5 Each party will provide the Project Manager with [monthly][quarterly][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][annual] report will be circulated to each member of the Steering Committee with the written notice for the relevant meeting
- 3.6 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.
- 3.7 [In addition to his duties under the Funding Conditions,] the Project Manager will:
 - 3.7.1 be the primary conduit for exchanges of information with the Funding Body;
 - 3.7.2 be responsible to the Steering Committee for the day-to-day management of the Project;
 - 3.7.3 be responsible for the financial administration of the Project as required by the Funding Conditions;
 - 3.7.4 be responsible for implementing decisions taken by the Steering Committee;
 - 3.7.5 prepare progress reports as required by the Funding Body; and
 - 3.7.6 monitor the progress of the Project.

4. FINANCIAL CONTRIBUTION AND [EXTERNAL FUNDING][PAYMENT PLAN]

- 4.1 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 pay its Financial Contribution to the Project in accordance with Schedule 1 within [30][60] days after its receipt of an 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.

- 4.2 Unless any VAT exemption applies, all amounts are exclusive of VAT (or any similar tax) which any party making a Financial Contribution will pay at the rate from time to time prescribed by law.
- 4.3 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 above the London 3 month Interbank Offered Rate from time to time in force] OR [in accordance with the Late Payments of Commercial Debts (Interest) Act 1998]. 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 that is late paying will pay that interest on demand.
- 4.4 [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].
- 4.5 The financial arrangements for the Project will be overseen by the Steering Committee [and will be as set out in the Funding Conditions].
- 4.6 Claims for any External Funding will be made through the Project Manager. Each of the parties will provide sufficient information to the Project Manager to allow the Lead Party to claim the External Funding and to submit reports to the Funding Body in accordance with the Funding Body's requirements from time to time. Each of the parties will certify its claims for any External Funding in such way as may be necessary to allow the Lead Party to give any certificate required by the Funding Body in relation to those claims.
- 4.7 The Lead Party will, within thirty (30) days after receipt of any of the External Funding, pay that External Funding (or the appropriate part of it) to the party to which that External Funding is due.
- 4.8 Each party will refund to the Lead Party on demand: any overpayment of any External Funding; and any monies received by that party that the Funding Body requires to be repaid in accordance with the Funding Conditions. Each party will pay to the Funding Body any payments that are to be made by that party in order to comply with the Funding Conditions. Each of the other parties will indemnify the Lead Party and keep it indemnified against all and any refund, repayment or payment that the Lead Party is required to make under the Funding Conditions to the Funding Body on behalf of that other party.
- 4.9 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.
- 4.10 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:
- 4.10.1 at least [14] days written notice is given in advance to the Project Manager;
- 4.10.2 the inspection or examination takes place during the Project Manager's normal working hours; and

4.10.3 the inspecting party and the accountant will keep confidential any information that it may acquire in the exercise of its rights under this clause.

4.11 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 that is obliged to make payments to it relating to its exploitation of the IP in the Results provided:

4.11.1 at least [14] days written notice is given in advance to the party whose accounts and records are to be inspected;

4.11.2 the inspection or examination takes place during that party's normal working hours; and

4.11.3 the inspecting party and the accountant will keep confidential any information that it may acquire in the exercise of its rights under this clause.

5. **USE AND EXPLOITATION OF INTELLECTUAL PROPERTY**

5.1 This Agreement does not affect the ownership of any Intellectual Property in any Background or in any other technology, design, work, invention, software, data, technique, know-how, or materials that are not Results. The Intellectual Property in them will remain the property of the party that contributes them to the Project (or its licensors). No licence to use any Intellectual Property is granted or implied by this Agreement except the rights explicitly granted in this Agreement.

5.2 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, but for no other purpose. None of the parties may grant any sub-licence to use any other party's Background except:

5.2.1 that any party may allow its Group Companies, and any person working for it or any Group Company, or on its behalf or that of any Group Company, to use any party's Background for the purpose of carrying out the Project, but for no other purpose; or

5.2.2 as permitted under any further licence granted under clause 5.6.

5.3 The party that creates or generates any Result will own the Intellectual Property in that Result, and may take such steps as it may decide from time to time, at its expense and sole discretion, to register and maintain any protection for that Intellectual Property, 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. Where any third party such as a student or contractor is involved in the Project, the party engaging that contractor will ensure that the student and the contractor assign to it any Intellectual Property they may have in the Results in order to be able to give effect to the provisions of this clause 5.

5.4 Where any Result is created or generated by two or more parties jointly and it is impossible to distinguish each party's intellectual contribution to the creation of the Intellectual Property in that Result, the Intellectual Property in that Result will be owned by those parties in equal shares. The owners may take such steps as they may decide from time to time, at their joint and equal expense, to register and maintain any protection for that Intellectual Property, 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. If one or more of the owners does not wish to take any such step or action, the other owner(s) may do so at their expense, and the party not wishing to take such steps or action will provide, at the expense of the party making the request, any assistance that is reasonably requested of it.

- 5.5 Each of the parties will notify the Project Manager promptly after identifying any Result that 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][annual] reports provided under clause 3.5.
- 5.6 Except as permitted in clauses 5.2, 5.7, 5.8, 5.9 and 5.10, none of the parties will have the right to use another party's Background or Results (whether to exploit its own or any other Results or for any other purpose) unless it negotiates and obtains a further licence that allows it to do so. The owner of the Intellectual Property in any Background or Result may refuse to grant that further licence, and if it agrees to grant that further licence, the terms of that further licence may include a royalty or other payment in return for that further licence.
- 5.7 Any joint owner of any of the Intellectual Property in any Result may deal with and exploit that Intellectual Property as though it were the sole owner, without being required to account to any other joint owner for any share in the revenues generated by that dealing or exploitation, provided that no joint owner may grant any third party any rights that detract from any other joint owner's right to deal with any jointly owned Intellectual Property.
- 5.8 Each 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. Any party may allow its Group Companies, and any person working for it or any Group Company, or on its behalf or that of any Group Company, to use any of the Results for the purpose of carrying out the Project.
- 5.9.1 Each party (the Potential Grantor) will, if another party (the Party Wishing to Exploit) gives it written notice (an Option Notice) at any time during the Project Period plus a further [??] months, negotiate the terms on which the Potential Grantor will grant rights to the Party Wishing to Exploit to exploit the Intellectual Property in some or all of its Results and its Background.
- 5.9.2 Following the Potential Grantor's receipt of an Option Notice, the Potential Grantor and the Party Wishing to Exploit will negotiate in good faith, for a period of up to [90 days][6 months] after the date of receipt of the Option Notice (the Negotiation Period) the terms of an assignment or licence. If the parties are unable to agree the terms of an assignment or licence within the Negotiation Period, the rights of the Party wishing to Exploit under clauses 5.9.1, 5.9.3 and 5.9.4 (but not the licence in clause 5.8) will lapse.
- 5.9.3 The Potential Grantor will not, during the Negotiation Period, negotiate with any other party with a view to granting a licence to use its Results or Background or assigning the Intellectual Property in its Results or Background nor, during the [3][6][12] months following the end of the Negotiation Period, will the Potential Grantor grant a licence of any of its Result or assign any of the Intellectual Property in its Results or Background to any party on any terms more favourable than those offered to the Party Wishing to Exploit pursuant to this clause 5.9.

- 5.9.4 Until the earlier of the end of the Negotiation Period and the date of the assignment or grant of a licence pursuant to this clause 5.9, the Potential Grantor will consult with the Party Wishing to Exploit about making patent applications in respect of the Results. If, during the Negotiation Period, the Party Wishing to Exploit wishes the Potential Grantor to apply for any patent in relation to any of the Results, the Party Wishing to Exploit will reimburse to the Potential Grantor the reasonable costs and expenses incurred by the Potential Grantor since the date of this Agreement in relation to the filing and prosecution of that patent application, including (without limitation) patent agents' fees, as a result of any request to apply for, or to maintain, any patent at the Party Wishing to Exploit's request. If the Potential Grantor later licenses or assigns to another party any of the Results or the Background for which the Party Wishing to Exploit has paid any such costs and expenses, the Potential Grantor will reimburse those costs and expenses to the Party wishing to Exploit.
- 5.10 Despite the provisions of clause 5.9 or any assignment or licence under clause 5.9, each Academic Party and each of its employees and students will have the irrevocable, royalty-free right to use the Results for the purposes of academic teaching and academic research[and clinical patient care][, including research projects sponsored by any third party]. The rights in this clause are subject to the rules on Academic Publication in clause 6.

6. **ACADEMIC PUBLICATION**

- 6.1 Any employee or student of any Academic Party (whether or not involved in the Project) may, provided that Academic Party has not received a Confidentiality Notice under clause 6.2, Publish any Background (unless it is the Confidential Information of another party) or any of the Results.
- 6.2 Each of the Academic Parties will submit to any other party that owns the Intellectual Property in any of the Results or that has contributed any Background to the Project, in writing, details of those Results, and of that Background that any employee or student of that Academic Party intends to Publish, at least [30][60] days before the date of the proposed submission for Publication. Any other party may, by giving written notice to the party that has submitted those details ("a Confidentiality Notice"): require that party to delay the proposed Publication for a maximum of [??] month[s] after receipt of the Confidentiality Notice if, in its reasonable opinion, that delay is necessary in order to seek patent or similar protection for any of its Background or any the Results that are to be Published; or prevent the Publication of any of its Background that is Confidential Information. The Confidentiality Notice must be given within [15][30] days after receipt of details of the proposed Publication. If a Confidentiality Notice is not received within that period, the proposed Publication may proceed, provided that, whether or not a Confidentiality Notice has been given, any other party's Background that is Confidential Information may not be published.

7. **CONFIDENTIALITY**

- 7.1 [Without prejudice to any obligations of confidentiality in the Funding Conditions,] and subject to clause 6, none of the parties will [, either during the Project Period or for [3][5][7][10] years after the end of the Project Period,] disclose to any third party nor use for any purpose, except carrying out the Project, any other party's Confidential Information.
- 7.2 None of the parties will be in breach of any obligation to keep any Background or other information confidential or not to disclose it to any other party to the extent that it:

- 7.2.1 is known to the party making the disclosure before its receipt in connection with the Project, and not already subject to any obligation of confidentiality to another party;
 - 7.2.2 is or becomes publicly known without any breach of this Agreement or any other undertaking to keep it confidential;
 - 7.2.3 has been obtained by the party making the disclosure from a third party in circumstances where the party making the disclosure has no reason to believe that there has been a breach of an obligation of confidentiality;
 - 7.2.4 has been independently developed by the party making the disclosure; or
 - 7.2.5 is disclosed pursuant to the requirement of any law or regulation (provided, in the case of a disclosure under the Freedom of Information Act 2000, none of the exceptions to that Act applies to the information disclosed) or the order of any Court of competent jurisdiction, 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
 - 7.2.6 is approved for release in writing by an authorised representative of the party whose information it is.
- 7.3 None of the parties will be in breach of any obligation to keep any Background that is not Confidential Information or other information, confidential or not to disclose them to any third party by:
- 7.3.1 Publishing it if it has followed the procedure in clause 6.2 and has received no Confidentiality Notice within the period stated in that clause[; or
 - 7.3.2 disclosing it to the Funding Body in accordance with the Funding Conditions].
- 7.4 None of the parties will be in breach of any obligation to keep another party's Background, or other information, confidential or not to disclose them to any third party, by making them available to any Group Company or any person working for or on its behalf or on behalf of a Group Company, who needs to know the same in order to exercise the rights granted in clause 5.2 or 5.8 provided they are not used except as expressly permitted by this Agreement and the recipient undertakes to keep that Background or that information confidential.
- 7.5 If any party that is subject to the Freedom of Information Act 2000 receives a request under that Act to disclose any information that, under this Agreement, is the Confidential Information of another party, it will notify that other party and will consult with it promptly and before making any disclosure under that Act. That other party will respond to party that received the request within [5] Business Days after receiving the notice, providing information to assist the party that received the request to determine whether or not an exemption to the Freedom of Information Act applies to the information requested under that Act.
- 7.6 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[; except that each Academic Party

may identify the sums received from any other party in that Academic Party's Annual Report and similar publications].

8. LIMITATION OF LIABILITY

8.1 Each of the parties warrants to each of the others that, to the best of its knowledge and belief (having made reasonable enquiry of those of its employees involved in the Project or likely to have relevant knowledge[, and in the case of each Academic Party any student involved in the Project], but not having made any search of any public register) any advice or information given by it or any of its employees[or students] who work on the Project, and 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.

OR

8.1 None of the parties makes any representation or gives any warranty to any of the others 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.

8.2 Except under [the limited warranty in clause 8.1 and] the indemnity in clause 8.3, and subject to clause 8.6, none of the parties accepts any liability or responsibility for any use which may be made by any other party of any Results, nor for any reliance which may be placed by that other party on any Results, nor for advice or information given in connection with any Results.

8.3 Each [Commercial]Party (the Indemnifying Party) will indemnify each of the other parties and their employees[and students] (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 that Indemnifying Party's use of any of the Results or any materials, works or information received from an Indemnified Party pursuant to the terms of this Agreement, provided that the Indemnified Party must:

8.3.1 promptly notify the Indemnifying Party of details of the claim;

8.3.2 not make any admission in relation to the claim;

8.3.3 allow the Indemnifying Party to have the conduct of the defence or settlement of the claim; and

8.3.4 give the Indemnifying Party all reasonable assistance (at the Indemnifying Party's expense) in dealing with the claim.

The indemnity in this clause 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, its breach of clause 7 or its knowing infringement any third party's Intellectual Property.

8.4 Subject to clause 8.6, and except under the indemnity in clause 8.3, the liability of each party to all of the others for any breach of this Agreement, any negligence or arising in any other way out of the subject matter of this Agreement, the Project or the Results, will not extend to any indirect damages or

losses, or to any loss of profits, loss of revenue, loss of data, loss of contracts or opportunity (whether direct or indirect), even 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.

- 8.5 Subject to clause 8.6, and except under the indemnity in clause 8.3, the aggregate liability of each party to all of the others 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 or the Results, will not exceed in total [that party's Financial Contribution][the portion of the External Funding allocated to that party][£????].
- 8.6 Nothing in this Agreement limits or excludes any party's liability for:
- 8.6.1 death or personal injury;
 - 8.6.2 any fraud or for any sort of liability that, by law, cannot be limited or excluded;
 - 8.6.3 [any breach of the Funding Conditions;] or
 - 8.6.4 any loss or damage caused by a deliberate breach of this Agreement or any breach of clause 7.
- 8.7 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.

9. **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 is more than [3][6] months, the other parties may, if they unanimously agree to do so, treat that party as having withdrawn from the Project and the provisions of clauses 10.4 - 10.9 (inclusive) will apply.

10. **TERMINATION, WITHDRAWAL AND NEW PARTIES**

- 10.1 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:

10.1.1 that party 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 [30][60][90] days after receipt of written notice specifying the breach and requiring its remedy; or

10.1.2 that party 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

and in either case that party will be deemed to have withdrawn from the Project.

- 10.2 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 [3][6] 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 [3] months' notice.
- 10.3 Any party may withdraw from the Project by giving to each of the other parties not less than 3 months' notice if any of the Key Personnel appointed by any party is unable or unwilling to be involved in the Project.
- 10.4 If a party withdraws or is treated as having withdrawn from the Project in accordance with clause 10.1, 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].
- 10.5 A party that withdraws or that is treated as having withdrawn from the Project in accordance with clause 10.1 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 from any of the other parties.
- 10.6 Rights granted under clause 5.2 by a party that withdraws or that is treated as having withdrawn from the Project in accordance with clause 10.1 to any of the other parties in respect of the withdrawing Party's Background will continue for the duration of the Project and will be extended to any new party to this Agreement.
- 10.7 Rights granted under clause 5.8, 5.9 or 5.10 by a party that withdraws or that is treated as having withdrawn from the Project in accordance with clause 10.1 to any of the other parties in respect of the withdrawing Party's Results will continue and will be extended to any new party to this Agreement.
- 10.8 The rights and obligations of any joint owner of any Intellectual Property will continue under clauses 5.4 and 5.7, despite the fact that one or more joint owners have withdrawn or are treated as having withdrawn from the Project in accordance with clause 10.1.
- 10.9 Subject to clause 10.8, all rights to use any other party's Intellectual Property granted under this Agreement to a party that withdraws or that is treated as having withdrawn from the Project in accordance with clause 10.1 will cease immediately.
- 10.10 Clauses 1, 4.6, 4.7, 4.8, 5, 6, 7, 8, 9, 10.4, 10.5, 10.6, 10.7, 10.8, 10.9, 10.10 and 11 will survive the completion or termination of the Project, the expiry of this Agreement, or the withdrawal of any party for any reason and will continue in force indefinitely or, in the case of clause 7, in accordance with clause 7.1.
- 10.11 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].

11. GENERAL

- 11.1 **Notices** : Any notice to be given under this Agreement must be in writing, may 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	Deemed day of receipt
By hand or courier	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
By fax (provided the sender's fax machine confirms complete and error-free transmission of that notice to the correct fax number)	the next Business Day after sending or, if sent before 16.00 (sender's local time) on the Business Day it was sent

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

For AAA University:

Name:

Address:

Fax number:

For XXX:

Name:

Address:

Fax number:

For BBB University:

Name:

Address:

Fax number:

For ZZZ:

Name:

Address:

Fax number:

- 11.2 **Headings**: The headings in this Agreement are for ease of reference only; they do not affect its construction or interpretation.
- 11.3 **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. That consent may not be unreasonably withheld or delayed.
- 11.4 **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.
- 11.5 **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.

- 11.6 **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.
- 11.7 **Entire agreement:** This Agreement [and the Funding Conditions] constitute 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.
- 11.8 **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.
- 11.9 **Amendments:** No variation or amendment of this Agreement will be effective unless it is made in writing and signed by each party's representative.
- 11.10 **Third parties:** No one except a party to this Agreement has any right to prevent the amendment of this Agreement or its termination, and no one except a party to this Agreement may enforce any benefit conferred by this Agreement, except that an Indemnified Party may take the benefit of and enforce clause 8.3 and the Key Personnel may take the benefit of and enforce clause 7.6.
- 11.11 **Governing law:** This Agreement is governed by, and is to be construed in accordance with, English law. The English Courts will have exclusive jurisdiction to deal with any dispute which has arisen or may arise out of or in connection with this Agreement, except that any party may bring proceedings for an injunction in any jurisdiction.
- 11.12 **Escalation:** If the parties are unable to reach agreement on any issue concerning this Agreement or the Project within 14 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 university, to [*insert officer*] in the case of BBB University, 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 14 days after the referral. Any party may bring proceedings in accordance with clause 11.11 if the matter has not been resolved within that 14 day period, and any party may apply to the court for an injunction, whether or not any issue has been escalated under this clause.

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

Name

Name

Position

Position

Signature

Signature

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

Name

Name

Position

Position

Signature

Signature

SCHEDULE 1

The Financial Contributions

SCHEDULE 2

The Project Plan

SCHEDULE 3

The Funding Conditions

SCHEDULE 4

Terms of Reference of the Steering Committee

SCHEDULE 5

Good Data Management Practices

1. Research data must be generated using sound scientific techniques and processes;
2. Research data must be accurately recorded in accordance with good scientific practices by the people conducting the research;
3. Research data must be analysed appropriately, without bias and in accordance with good scientific practices;
4. Research data and the Results must be stored securely and be easily retrievable;
5. Data trails must be kept to allow people to demonstrate easily and to reconstruct key decisions made during the conduct of the research, presentations made about the research and conclusions reached in respect of the research; and
6. Each party must have the right, on not less than 30 days written notice, to visit any other party to verify that it is complying with the above practices and procedures.

**[SCHEDULE 6
The Payment Plan]**