

Dated \_\_\_\_\_ 200[8]

(1) [.....]

(2) [.....]

**MODEL  
RESEARCH COLLABORATION AGREEMENT 5  
(CONTRACT RESEARCH)**

**(The Sponsor owns IP in the Results and no rights to use the Results for academic purposes are reserved to the University)**

**THIS AGREEMENT** dated [.....] 200[8] is made **BETWEEN:**

- (1) [.....], whose administrative offices are at [.....] ("the University"); and
- (2) [.....] [**LIMITED**], a company registered in [England] under number [.....], whose registered office is at [.....] ("the Sponsor")

1. **DEFINITIONS**

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

**this Agreement:** this document, including its Schedules, as amended from time to time in accordance with clause 9.9;

**Background:** 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 the other 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];

**Confidential Information:** each party's confidential information is: any Background disclosed by that party to the other for use in the Project[ and identified as confidential before or at the time of disclosure]; and any Results in which that party owns the Intellectual Property;

**the Effective Date:** [*insert date the Project starts*];

**the Financial Contribution:** the financial contribution to be provided by the Sponsor set out in Schedule 1;

**the Good Data Management Practices:** the practices and procedures set out in Schedule 3;

**a Group Company:** any undertaking which is, on or after the date of this Agreement from time to time, a subsidiary undertaking of the Sponsor, a parent undertaking of the Sponsor or a subsidiary undertaking of a parent undertaking of the Sponsor, 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, 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;

- the Key Personnel:** the Principal Investigator and any other key personnel identified in Schedule 2;
- 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 Location:** the location(s) at which the Project will be carried out as set out in Schedule 2;
- the Principal Investigator:** [*insert name*] or his or her successor appointed under clause 8.2;
- the Project:** the programme of work described in Schedule 2, as amended from time to time in accordance with clause 9.9;
- the Project Period:** the period described in clause 2.1;
- 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 Sponsor's Supervisor:** [*insert name*] or his or her successor appointed under clause 8.2].

## 2. THE PROJECT

- 2.1 The Project [will begin on][began on] the Effective Date and will continue until [*insert date*] or until any later date agreed in writing between the parties, or until this Agreement is terminated in accordance with clause 7 or 8. If this Agreement is entered into after the Effective Date, it will apply retrospectively to work carried out in relation to the Project on or after the Effective Date.
- 2.2 [The University][Each of the parties] will carry out the tasks allotted to it in Schedule 2, and will provide the human resources, materials, facilities and equipment that are designated as its responsibility in Schedule 2. The Project will be carried on under the direction and supervision of the Principal Investigator. The Project will be carried out at the Location.

- 2.3 Each of the parties will use all reasonable endeavours to obtain all regulatory and ethical licences, consents and approvals necessary to allow it to carry out the tasks allotted to it in Schedule 2.
- 2.4 Each of the parties will ensure that its employees and students (if any) involved in the Project: observe the conditions attaching to any regulatory and ethical licences, consents and approvals; keep complete and accurate records of all research, development and other work carried out in connection with the Project and of all Results 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.
- 2.5 Although [the University][each of the parties] will use reasonable endeavours to carry out the Project in accordance with Schedule 2, [the University does not undertake][neither party undertakes] that any research will lead to any particular result, nor does it guarantee a successful outcome to the Project.
- 2.6 The University will provide the Sponsor with [monthly][annual][quarterly] reports summarising the progress of the Project and a copy of all of the Results.
- 2.7 Each of the parties warrants to the other 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. FINANCIAL CONTRIBUTION**

- 3.1 The University will keep complete and accurate accounts of its expenditure on the Project. The Sponsor will pay the Financial Contribution to the University in accordance with Schedule 1 within [30][60] days after receipt by the Sponsor of [monthly][quarterly] invoices. Where the Financial Contribution is being claimed against costs and expenses incurred by the University, each invoice must be accompanied by a statement certified by an authorised officer of the University.
- 3.2 All amounts payable to the University under this Agreement are exclusive of VAT (or any similar tax) which the Sponsor will pay at the rate from time to time prescribed by law.
- 3.3 If the Sponsor fails to make any payment due to the University under this Agreement, without prejudice to any other right or remedy available to the University, the University 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 Interbank Offer 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 or last date for payment to the actual date of payment, both dates inclusive, and will be compounded quarterly. The Sponsor will pay that interest to the University on demand.
- 3.4 [Except as set out in Schedule 2, ]the University will own all equipment purchased or constructed by it, or for it, using the Financial Contribution.

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

- 4.1 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 expressly granted in this Agreement.
- 4.2 Each Party grants the other a royalty-free, non-exclusive licence to use its Background for the purpose of carrying out the Project, but for no other purpose. Neither party may grant any sub-licence to use the other's Background except that the Sponsor may allow its Group Companies, and any person working for or on behalf of the Sponsor or any Group Company, to use the University's Background for the purpose of carrying out the Project.
- 4.3 The Sponsor will own the Intellectual Property in the Results and may take such steps as it may decide from time to time, and at its own expense, to register and maintain any protection for that Intellectual Property, including filing and prosecuting patent applications for any of the Results. Where any third party such as a student or contractor is involved in the Project, the University or the party engaging that contractor (as the case may be) will ensure that the student and the contractor assign any IP they may have in the Results in order to be able to give effect to the provisions of this clause 4. The University will ensure that its employees involved in the creation of the Results give the Sponsor such assistance as the Sponsor may reasonably request in connection with the registration and protection of the Intellectual Property in the Results, 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.
- 4.4 To the extent that any Intellectual Property in the Results is capable of prospective assignment, the University now assigns those Intellectual Property to the Sponsor; and to the extent any Intellectual Property in the Results cannot prospectively be assigned, the University will assign those Intellectual Property to the Sponsor as and when they are created, at the request of the Sponsor.
- 4.5 The University will notify the Sponsor promptly after identifying any Result that the University believes is patentable, and will supply the Sponsor with copies of that Result. The University will notify other Results to the Sponsor in the reports provided under clause 2.4.
- 4.6 The Sponsor grants the University a royalty-free, non-exclusive licence to use the Results for the purpose of carrying out the Project, but for no other purpose. The University may not grant any sub-licence to use the Results.

## 5. **CONFIDENTIALITY**

- 5.1 Neither party 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 of the other party's Confidential Information.
- 5.2 Neither party will be in breach of any obligation to keep any Background, Results or other information confidential or not to disclose it to any other party to the extent that it is:

- 5.2.1 known to the party making the disclosure before its receipt from the other party, and not already subject to any obligation of confidentiality to the other party;
  - 5.2.2 or becomes publicly known without any breach of this Agreement or any other undertaking to keep it confidential;
  - 5.2.3 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 owed to the other party;
  - 5.2.4 independently developed by the party making the disclosure;
  - 5.2.5 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 other of the requirement and the information required to be disclosed; or
  - 5.2.6 approved for release in writing by an authorised representative of the other party.
- 5.3 The Sponsor will not be in breach of any obligation to keep any of the University'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 behalf of the Sponsor or a Group Company who needs to know the same in order to exercise the rights granted in this Agreement, provided they are not used except as expressly permitted by this Agreement and the recipient undertakes to keep that Background and information confidential.
- 5.4 If the University receives a request under the Freedom of Information Act 2000 to disclose any information that, under this Agreement, is the Sponsor's Confidential Information, it will notify the Sponsor and will consult with the Sponsor promptly and before making any disclosure under that Act. The Sponsor will respond to the University within 10 days after receiving the University's notice if that notice requests the Sponsor to provide information to assist the University to determine whether or not an exemption to the Freedom of Information Act applies to the information requested under that Act.
- 5.5 Neither the University nor the Sponsor will use the other's name or logo in any press release or product advertising, or for any other promotional purpose, without first obtaining the other's written consent[; except that the University may identify the sums received from the Sponsor in the University's Annual Report and similar publications].

## 6. **LIMITATION OF LIABILITY**

- 6.1 Each of the parties warrants to the other 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 the University, 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, or the content or use of any Results, any 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**

- 6.1 Neither of the parties [except under clause 6.8] makes any representation or gives any warranty to the other 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.
- 6.2 Except under [the limited warranty in clause[s] 6.1[and 6.8] and] the indemnity in clause 6.3, and subject to clause 6.6, neither party accepts any liability or responsibility for any use which may be made by the 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.
- 6.3 The Sponsor will indemnify the University, [the Principal Investigator] and every [other] employee [and student] of the University (the Indemnified Parties), and keep them fully and effectively indemnified, against each and every claim made against any of the Indemnified Parties as a result of the Sponsor's use of any of the Results or any materials, works or information received from them pursuant to the terms of this Agreement, provided that the Indemnified Party must:
- 6.3.1 promptly notify the Sponsor of details of the claim;
  - 6.3.2 not make any admission in relation to the claim;
  - 6.3.3 allow the Sponsor to have the conduct of the defence or settlement of the claim; and
  - 6.3.4 give the Sponsor all reasonable assistance (at the Sponsor'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 breach of clause 5, its deliberate breach of this Agreement or its knowing infringement of any third party's Intellectual Property.

- 6.4 Subject to clause 6.6, and except under the indemnity in clause 6.3, the liability of either party to the other for any breach of this Agreement, any negligence, or arising in any other way out of the subject matter of this Agreement, the Project and the Results, will not extend to 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 if they were within the other party's contemplation.
- 6.5 Subject to clause 6.6, and except under the indemnity in clause 6.3, the aggregate liability of each party to the other for all and any breaches of this Agreement, any negligence or arising in any other way out of the subject matter of this Agreement,

the Project, any Background and the Results, will not exceed in total [the Financial Contribution].

6.6 Nothing in this Agreement limits or excludes either party's liability for:

6.6.1 death or personal injury;

6.6.2 any fraud or for any sort of liability that, by law, cannot be limited or excluded; or

6.6.3 any loss or damage caused by a deliberate breach of this Agreement or a breach of clause 6.

6.7 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.

6.8 [Any assignment made under or pursuant to clause 4.4 is made or will be made with full title guarantee.] OR [The University warrants to the Sponsor that in relation to any assignment made under or pursuant to clause 4.4:

6.8.1 the University has the right to dispose of the Intellectual Property in the Results and that the University it will, at its own cost, do all that it reasonably can to give the title that it purports to give; and

6.8.2 that the Intellectual Property in the Results is free from all charges and encumbrances and rights of any third party (except those that the University is unaware or could not reasonably be aware of.

## 7. **FORCE MAJEURE**

If the performance by either 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 party may terminate this Agreement with immediate effect by giving written notice to the other party.

## 8. **TERMINATION**

8.1 Either party may terminate this Agreement with immediate effect by giving notice to the other party if:

8.1.1 the other party is in breach of any provision of this Agreement 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

8.1.2 the other 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

Lambert Research Collaboration Agreement 5 clean (July 2008)

receiver or receiver is appointed over the whole or any part of the other party's assets, or if the other party makes any arrangement with its creditors.

- 8.2 Each of the parties will notify the other 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 party will not unreasonably refuse to accept the nominated successor or if the appointor cannot find a successor, either party may terminate this Agreement by giving the other not less than [3] months' notice.
- 8.3 Clauses 1, 4, 5, 6, 7, 8.3, 8.4[, 8.5] and 9 will survive the expiry of the Project Period or the termination of this Agreement for any reason and will continue indefinitely.
- 8.4 On the termination of this Agreement, the Sponsor will pay the University for all work done prior to termination. If the Sponsor has paid any of the Financial Contribution in advance and the whole of that contribution has not, by the end of the Project Period or the termination of this Agreement, been used by the University for the purposes for which that Financial Contribution was provided, the University will return to the Sponsor the unused portion of that contribution.
- 8.5 Following the termination of this Agreement [by the University] under clause 8.2, if the Financial Contribution includes the costs of employing any University staff involved in the Project, the Sponsor will continue to reimburse, in accordance with clause 3, the actual direct employment costs of staff who were appointed by the University to work on the Project before the service of the notice, provided that the University takes all reasonable steps to minimise those costs. Reimbursement will continue until the effective date of termination of each staff contract or the date on which the Project was to have ended (whichever is the earlier). Those direct employment costs will include a proportion of any redundancy costs that have been incurred by the University as a direct result of the termination of this Agreement, that proportion to be calculated by dividing the individual's involvement in the Project by the duration of his period of employment by the University.

## 9. GENERAL

- 9.1 **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:

<b>Method of service</b>	<b>Deemed day of receipt</b>
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	the next Business Day after sending or, if sent before 16.00 (sender's local time) on the Business Day it was sent

notice to the correct fax number)

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

**For the University:**

Name:

Address:

Fax number:

**For the Sponsor:**

Name:

Address:

Fax number:

- 9.2 **Headings:** The headings in this Agreement are for ease of reference only; they do not affect its construction or interpretation.
- 9.3 **Assignment:** Neither party 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 the other party. That consent may not be unreasonably withheld or delayed.
- 9.4 **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.
- 9.5 **Waiver of rights:** If a party fails to enforce, or delays in enforcing, an obligation of the 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 of any provision of this Agreement will not, unless expressly stated to the contrary, constitute a waiver of that provision on a future occasion.
- 9.6 **No agency:** 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. Neither party has any authority to make any representation or commitment, or to incur any liability, on behalf of the other.
- 9.7 **Entire agreement:** This Agreement constitutes 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. 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. However, this clause does not exclude any liability which either party may have to the other (or any right which either party may have to rescind this Agreement) in respect of any fraudulent misrepresentation or fraudulent concealment prior to the execution of this Agreement.
- 9.8 **Formalities:** Each party will take any action and execute any document reasonably required by the 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.

- 9.9 **Amendments:** No variation or amendment of this Agreement will be effective unless it is made in writing and signed by each party's representative.
- 9.10 **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, unless this Agreement expressly provides otherwise.
- 9.11 **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 either party may bring proceedings for an injunction in any jurisdiction.
- 9.12 **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 other of that issue, they will refer the matter to [*insert officer*] in the case of the University, and to [*insert officer*] in the case of the Sponsor in an attempt to resolve the issue within 14 days after the referral. Either party may bring proceedings in accordance with clause 10.11 if the matter has not been resolved within that 14 day period, and either 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 the University:      **SIGNED** for and on behalf of the Sponsor:

Name

Name

Position

Position

Signature

Signature

[Read and understood by the Principal Investigator

Read and understood by the Sponsor's Supervisor

.....  
Signature

.....  
Signature

.....  
Date

.....  
Date]

## SCHEDULE 1

### The Financial Contribution

This Schedule should set out complete details of the Financial Contribution, e.g. the types of expenditure for which the Sponsor will reimburse the University (see below for an example), the maximum amount that the Sponsor will pay, any milestones to be met and any conditions attaching to payment.

The parties may agree that the Sponsor will cover increases in salary, meet national pay awards, superannuation and NI contributions. In that case this Schedule should reflect this.

[The starting point is that the Sponsor will meet the full economic cost of the Project.]

***[Other examples of financial models to be included]***

	Year One	Year Two
Salary for [name of Appointee] at [x] including superannuation and NI	£	£
Overheads (*% on salary)	£	£
Consumables	£	£
Equipment [ <i>itemise</i> ]	£	£
<b>Total</b>	<b>£</b>	<b>£</b>

All amounts in this Schedule exclude VAT.

The University's Finance Officer is: [*insert details*]

All payments of the Financial Contribution will be made by [bank transfer to: [*insert details*]]

## **SCHEDULE 2**

### **The Project**

This Schedule should contain a full description of the Project, clearly setting out what each party is to do (with a timetable if appropriate), and the human resources, facilities and equipment each party is to provide. Below is a list of the matters that should be covered in this Schedule. It is not exhaustive and there may be additional issues that are important to the Project.

Unless this Schedule states otherwise, all equipment bought by the University with the Financial Contribution will belong to the University.

#### **Scope of the Project**

#### **Aims of the Project**

**Any Key Personnel to be provided by the University (including the Principal Investigator)**

**Any Key Personnel to be provided by the Sponsor (including the Sponsor's Supervisor (if any))**

**Numbers of other full and part time staff to be provided by each party**

If either party is to recruit any key personnel, and whether the approval of the other party is necessary, should be clearly stated in this Schedule.

**Students participating in the Project**

**Project Management**

**who is to act as overall project manager**

**responsibilities of project manager**

**project meetings** (frequency, location and representation of each party)

**Facilities to be provided by each party**

**Equipment to be provided by each party** (and whether, if provided for use by the other, it is donated to the other or is on loan until the end of the Project. If any equipment is on loan, this Schedule should set out responsibility for keeping it in good condition, maintaining and insuring it.)

**Where the Project is to be carried out**

**Any Background (including materials) that the Sponsor must provide**

**Any Background (including materials) that the University must provide**

**Any Background (including materials) that is to be obtained by either party from a third party**

**Whether all Background is to be kept Confidential or which Background is to be kept confidential, for instance:**

All of the Sponsor's Background [except ?????] is Confidential Information.

**Anticipated outputs or Results**

**Tasks to be performed by each party** (with timetable of major milestones)

### **SCHEDULE 3**

#### **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.