

STANDARD RESEARCH AGREEMENT
January 2009



ITF Proposal No.	
Participants Contract Reference	

[NAME OF RESEARCHER]

[NAMES OF PARTICIPANTS]

***“[NAME OF PROJECT]”
RESEARCH AGREEMENT***

STANDARD RESEARCH AGREEMENT

January 2009



THIS AGREEMENT is made the [] day of [] 200[]

BETWEEN

- (1) **[NAME OF RESEARCHER]** (Registered No. [●]) whose registered office is at []; (the "Researcher");
and
- (2) **[NAME OF PARTICIPANT]** (Registered No. [●]) whose registered office is at [];
and
- (3) **[NAME OF PARTICIPANT]** (Registered No. [●]) whose registered office is at [];

etc. – include details of ALL Participants here

(Parties (2) to (n) being the "Participants", and each a "Participant")

WHEREAS

- (1) The RESEARCHER is engaged or wishes to engage in research and development in the field of [] and has undertaken research into the Technology.
- (2) The PARTICIPANTS wish to participate in good faith in the continued collaborative research in and development of the Technology in the terms of the Project, and are supporting the Project with the primary objective of being able to use the Foreground on fair and reasonable preferential commercial terms to enhance their, and their respective Affiliates' and CoVenturers', core business.
- (3) The Researcher wishes to undertake the Project.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINITIONS and INTERPRETATION

1.1 In this Agreement and the Recitals the following expressions shall have the meanings set out below (unless the context requires otherwise):

"Affiliate" means in relation to a Party any holding company or subsidiary of the Party or any subsidiary of any holding company of the Party. "holding company" and "subsidiary" shall have the meanings set out in s.1159 of the Companies Act 2006.

"Background" means any Intellectual Property Rights owned or otherwise in the possession of a Party prior to the date of this Agreement relating to the Technology or otherwise relevant to the Project or created by a Party otherwise than in the conduct of the Project without having used the Confidential Information belonging to the Researcher or its Affiliates or another Participant or its Affiliates, or the Foreground;

"Claim" means any claim, demand, cause of action (whether arising in contract, tort including without limitation in negligence or otherwise), judgment, remedies, debts,

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liens, loss, expense, proceeding, penalty, award of damages or liability (including without limitation reasonable legal fees, costs and expenses and sums paid by way of settlement or compromise);

“Confidential Information” means (i) any and all know how, information, materials, samples, reports and technical records, data, ideas, experience, rules-of-thumb, product specifications, or trade secrets provided by any Disclosing Party (as such term is referred to at Clause 5(1)(a) (Confidentiality)) to any other Party in connection with the Disclosing Party’s participation in the Project or otherwise relating to the business of the Disclosing Party and in whatever medium it exists or is stored **and** (ii) all reports, recommendations and results of the Project;

“Consequential Loss” means any indirect or consequential loss howsoever caused or arising whether under contract, in tort including without limitation in negligence, as a consequence of any breach of duty (statutory or otherwise), and shall be deemed to include, without limitation, loss of profit, business interruption, business opportunity or increased cost of working;

“CoVenturer” means, in respect of a Participant or its Affiliates, any person or entity, together with such Participant or its Affiliates from time to time, having a beneficial interest in the operations in respect of which the Participant or its Affiliates is either participating in the Project or in which the Participant or its Affiliates may later apply the results or product of the Project, and the successors and assigns of any such person or entity in respect of such interest;

“Form of Late Participant’s Agreement” means a form of late participant’s agreement substantially in the form set out in Schedule 2;

“Foreground” means the Intellectual Property Rights made or generated solely as a result of the Project;

“Independent Review” means an assessment of the Project and surrounding facts by a third party agreed to by all Parties (such agreement not to be unreasonably withheld or delayed).

“Intellectual Property Rights” means copyright, design rights, trademarks and patents (whether registered or not and all applications for any of them) and other forms of intellectual property rights whenever and howsoever arising for the full term thereof and any and all extensions thereto;

“ITF” means The Industry Technology Facilitator, a company limited by guarantee incorporated in Scotland (Registered No. 171891) having its registered office at The Enterprise Centre, Exploration Drive, Aberdeen Science and Technology Park, Aberdeen, AB23 8GX.

“Late Participant” means any person who wishes to participate in the Project after the date hereof;

“Net Sales Price” means the gross invoice price charged by Researcher (or by its authorised licensees / distributors) in respect of the sale or lease of a Product to a third party, less prompt payment, trade or quantity discounts, storage, packaging and transport costs, insurance charges and any governmental charge, VAT, tax (not computed on income) or duty directly payable in respect of the sale, lease, or transport of the Product to the extent they are included in the gross invoice price provided however that if Researcher (or any authorised Licensee(s)/distributor(s)) sells or leases any Product to a third party for a consideration other than money or

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in any transaction which is not at arm's length, the Net Sales Price shall be based upon Researcher's (or authorised Licensee's/distributor's) prevailing invoice price charged to independent and unrelated third party purchasers for the Product in question.

"Party" means a party to this Agreement (including, for the avoidance of doubt the signatory of any Form of Late Participants Agreement to this Agreement and "Party" shall be any one of them);

"Product" means any product and/or service arising from the Foreground.

"Project" means the project for the research and development of the Technology, as set out in the Project Proposal;

"Project Proposal" means the detailed plan for the conduct of the Project set out in Schedule 1, as amended in accordance with Clause 4 (Steering Committee) from time to time;

"Steering Committee" means the committee established for the management of the Project in accordance with Clause 4;

"Technology" means **[BRIEF DESCRIPTION OF THE TECHNOLOGY]**

"Working Day" means a day when the banks in England and Wales are open for business, other than a Saturday or Sunday.

- 1.2 The headings of Schedules and Clauses in this Agreement are included for convenience and ease of reference only, and are not included in this Agreement for the purposes of the construction thereof.
- 1.3 Any reference to any agreement in this Agreement includes any assignment, novation, supplement or amendment thereto entered into from time to time.
- 1.4 Any reference to Clauses or Schedules are references to Clauses in and Schedules to this Agreement and all such Schedules are incorporated herein and made a part hereof by reference.
- 1.5 In the event of conflict, the provisions of the main body of this Agreement shall prevail over the provisions of any Schedule except where expressly provided in the main body of this Agreement to the contrary.
- 1.6 Where the context requires, words denoting the singular shall also include the plural and vice versa.

2. OBLIGATIONS OF THE RESEARCHER

2.1 The Researcher shall:

- (a) carry out the Project with all due diligence, care and skill in accordance with all applicable laws and in accordance with the Project Proposal and the requirements of this Agreement;
- (b) use its reasonable endeavours to complete the Project on a collaborative basis, and all relevant Project milestones (as identified in the Project

Proposal) by the dates or within the periods specified in the Project Proposal. Additionally, subject to (but not dependent on) any decision of the Steering Committee pursuant to 4.1(g) (Commercialisation and exploitation of Project results), use its reasonable endeavours and/or take active steps to commercialise/exploit the results of the Project beyond that specified in the Project Proposal or without hindrance, allow others to do so if the circumstances set out at Clause 4.4 apply (Researcher not using reasonable endeavours to commercialise);

- (c) take all reasonable steps to ensure the health and safety of all Project personnel, contractors and visitors to Project work sites and comply with all health and safety regulations applicable to any work carried out as part of the Project and otherwise comply with all relevant laws and regulations in the conduct of the Project;
- (d) promptly at its own cost and (in the case of items paid for by the Project funding) without mark-up, supply all equipment, materials and facilities set out in the Project Proposal or as may be required to complete the Project other than the items identified to be supplied by a Participant or its Affiliate or its Coventurers therein. All such equipment and others (except as aforesaid) shall remain the property of the Researcher after termination of this Agreement, [unless the Project Proposal provides otherwise];
- (e) by no later than **[31 March]** in any calendar year prepare an annual statement of all expenditure related to the Project in the previous calendar year and, if required by the Steering Committee, a budget of expenditure and estimated expenditure in relation to the Project in the current **[and next]** calendar year[s];
- (f) provide receipts and other evidence of any expenditure in relation to the Project as the Steering Committee may from time to time reasonably require;
- (g) provide progress reports and a final Project report as more fully described in Schedule 1;
- (h) prepare a progress report (including a statement of expenditure), for presentation at each Steering Committee meeting, in respect of the period since the previous Steering Committee meeting;
- (i) provide such further reports and copies of relevant material as the Steering Committee may from time to time reasonably request;
- (j) appoint the key personnel identified in the Project Proposal who shall devote not less than the amount of time and attention specified in the Project Proposal;
- (k) for twenty four (24) months after completion of the Project maintain books and records, to the extent such books and records are created in the normal course of business, to show, in full, the use of all contributions by Participants under this Agreement and to make such books and records available for examination and verification by Participants. During normal business hours (on reasonable prior notice in writing being given), at a Participant's cost, a Participant's duly authorised independent representative may make any such examinations of said books and records as may be reasonably necessary or appropriate to verify the use of contributions by Participants hereunder only as approved by the Steering Committee.

- 2.2 The Researcher shall provide a representative to attend all meetings of the Steering Committee, who shall be a person engaged in the management of the Project on behalf of the Researcher. The costs of attendance at meetings of the Steering Committee shall be deemed to be included within the costs of the Project and the Researcher shall not be entitled to any additional payment.
- 2.3 If instructed by the Steering Committee, the Researcher shall, for and on behalf of all the Parties, enter into a Late Participant's Agreement in the terms set out in Schedule 2 with each Late Participant.
- 2.4 The Researcher shall have no entitlement to incur any expenditure in relation to the Project in excess of that set out in the Project Proposal without the prior written consent of the Steering Committee. Any such expenditure incurred without the prior written consent of the Steering Committee shall be for the sole account of the Researcher.
- 2.5 The Researcher warrants and represents to the Participants that:
- (a) it has the necessary right and authority to enter into this Agreement and to grant the licences referred to in Clauses 6 (Background) and 7 (Foreground);
 - (b) it is the sole beneficial owner, or lawful user of, all of its Background;
 - (c) it has the expertise and resources to conduct the Project in accordance with the Project Proposal and with the terms of this Agreement;
 - (d) all reports relating to the Project will be accurate and complete in all material respects and will properly represent the work carried out by the Researcher and the results thereof;
 - (e) it has taken and will take reasonable steps to protect and secure its proprietary information, Background and Foreground for the benefit of the Project .
- 2.6 The Researcher shall not publish or otherwise disclose any of the results of the Project (which are Confidential Information) without the prior written consent of the Steering Committee to do so, which shall not be unreasonably withheld or delayed.

3. OBLIGATIONS OF THE PARTICIPANTS

- 3.1 Each Participant shall pay the Researcher in accordance with Schedule 3.
- 3.2 Each Participant shall use its reasonable endeavours to achieve the objectives of the Project on a collaborative basis and shall endeavour to provide the information, data, materials, samples, equipment and assistance to the Researcher as specified in the Project Proposal (if any).
- 3.3 Each Participant shall, at its own cost, provide a representative to attend meetings of the Steering Committee.
- 3.4 The obligations of the Participant under this Agreement are entered into severally by each Participant in relation only to itself and the liability of each Participant hereunder shall extend only to loss or damage arising from its own breach. If more

than one Participant is in breach of the same obligation, liability for the total sum recoverable shall be attributed to such Participants in proportion to their total contributions set out in paragraph 1 of Schedule 3 grossed up to 100% of the total sum recoverable.

4. STEERING COMMITTEE

4.1 There is hereby established a Steering Committee, which shall:

- (a) monitor progress of the Project;
- (b) provide advice to the Researcher relating to the conduct of the Project;
- (c) review and approve the results and recommendations of the Researcher's Project reports, and determine whether the work has been satisfactorily performed;
- (d) approve changes to the Project Proposal;
- (e) consider proposals from potential Late Participants, and if considered appropriate, instruct and authorise the Researcher to enter into a Late Participant's Agreement with any such person and determine how such Late Participant's contribution shall be applied to the Project;
- (f) determine and administer the policy to be followed with regard to the publication of the results of the Project;
- (g) determine further developments to and/or commercialisation and exploitation of the results of the Project, and if thought fit, extend the term of this Agreement and the scope of the Project Proposal to include such activities;
- (h) determine whether to issue a notice to any Party pursuant to Clause 10.3 and how to deal with a Party who fails to remedy a breach pursuant to Clause 10.3 (Party in default);
- (i) approve any changes to key personnel;
- (j) reserve the right to monitor the health, safety and environmental procedures and practices that are being applied to the conduct of the Project.

4.2 The Steering Committee shall consist of one representative from each Party, who shall notify each other Party in writing of the identity of its representative and of any replacement thereto from time to time. ITF shall have the right to attend and/or be represented at any meeting(s) of the Steering Committee but shall not be obliged to do so nor be entitled to any vote at any such meeting(s).

4.3 Each representative shall have one vote at meetings of the Steering Committee and matters shall be decided by the affirmative vote of a majority of the persons present at the meeting, other than:

- (a) any change to the Project Proposal that has the effect of increasing the amount due under this Agreement from any Participant;

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- (b) the early termination of the Project, and of this Agreement;
- (c) the expulsion of any Party who as a Defaulting Party in accordance with Clause 10.3 has failed to remedy such breach;
- (d) any decision pursuant to Clause 4.1(g) (Commercialisation etc. of results);
- (e) any decision to publish the Project Results pursuant to Clause 2.6 (Publication);

which decisions shall require the affirmative vote of all the Parties other than, in the case of Clause 4.3(c), the Party whose rights have been removed under Clause 10.3 and any Affiliate of that Party.

- 4.4 Subject to Clause 7.2 (Researcher ownership of Foreground), if no decision pursuant to Clause 4.1(g) has been made by the first anniversary of the first proposal put to the Steering Committee in respect of further development to, or as the case may be commercialisation and / or exploitation of the results of the Project, and it has been determined by an Independent Review that the Researcher is not using reasonable endeavours and/or taking active steps to commercialise/exploit the results, then the Steering Committee may, by majority vote, authorise any Party to take any action to commercialise and / or exploit the results of the Project in any way it sees fit, without the consent of any other Party.
- 4.5 If no decision pursuant to Clause 4.1(g) has been made by the first anniversary of the first proposal put to the Steering Committee in respect of further development to, or as the case may be, commercialisation and / or exploitation of the results of the Project **and** it has been determined by an Independent Review that any Participant(s) is not using reasonable endeavours and / or taking active steps to achieve the objectives of the Project (which objectives include the commercialisation, exploitation and demonstrable use of the Technology) then the Steering Committee may, by majority vote, (provided that such majority includes the affirmative vote of the Researcher) authorise any other Party to take any action to commercialise and / or exploit the results of the Project in any way it sees fit.
- 4.6 The attendance of the representatives of at least two thirds of the Parties (or if such number is not a whole number, the nearest greater whole number thereto) shall constitute a quorum.
- 4.7 Meetings of the Steering Committee shall be held at such times and places as the Steering Committee may decide. Meetings shall be regulated as the Steering Committee may decide from time to time.
- 4.8 The Researcher shall call all such meetings and shall give at least ten (10) days' prior written notice thereof to all Participants. Any Participant may advise, by notice to all Participants, of any matter it wishes to be considered at such meeting.
- 4.9 Notwithstanding Clause 4.7 and 4.8, a special meeting of the Steering Committee may be held at any time at the request of any Party to all other Parties. Such request shall specify the matters to be considered and the time and place of the meeting, which shall be not less than ten (10) days after the date of the request.
- 4.10 Where pursuant to Clause 4.1(g) (Commercialisation etc. of results) or Clauses 4.4 (Researcher not using reasonable endeavours) or 4.5 (a Participant not using reasonable endeavours) above a decision is taken to further develop and/or commercialise and exploit the results of the Project, the Parties or the relevant

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Parties (as the case may be) shall each use reasonable endeavours to agree the terms for such further development and/or commercialisation and exploitation and negotiate these terms in good faith such that they are fair, reasonable and equitable.

5. CONFIDENTIALITY

5.1 Each Party (the "Recipient") shall:

- (a) during the term of this Agreement and for a period of five (5) years thereafter keep secret and confidential all Confidential Information disclosed to it by any other Party (the "Disclosing Party") and shall not disclose or permit it to be made available to any person, firm or company (except to the Affiliates of the Recipient and its and their employees or sub-contractors who shall be obliged by the Recipient to treat the Confidential Information as confidential and in the same manner and to an equivalent extent as provided for herein with regard to confidentiality, disclosure and use) without the Disclosing Party's prior written consent;
- (b) during the term of this Agreement and for a period of five (5) years thereafter use the Confidential Information solely in connection with the Project including its further development or commercialisation or exploitation;
- (c) upon withdrawal from the Project, or on termination of this Agreement, either return all Disclosing Party Confidential Information and all copies of it to the Disclosing Party, or at the Disclosing Party's request, confirm in writing to the Disclosing Party that all Confidential Information and all copies of it have been destroyed, save as required by law.

5.2 Nothing in Clause 5.1 shall apply to any information or data which:

- (a) at the time of its disclosure is in, or subsequently comes into the public domain (other than due to a breach of this Agreement);
- (b) is disclosed by the Disclosing Party on a non-confidential basis;
- (c) was lawfully in the possession of the Recipient or any of its Affiliates or sub-contractors prior to the date of the disclosure;
- (d) is subsequently received by the Recipient or any of its Affiliates or sub-contractors from a third party without any obligation of confidentiality (and, for the avoidance of doubt, the Recipient shall not be required to enquire whether there is a duty of confidentiality); or
- (e) is required to be disclosed by the Recipient or any of its Affiliates or sub-contractors by applicable law or order of a court of competent jurisdiction or government department or agency or by any recognised stock exchange.

6. BACKGROUND

6.1 No Party will make any representation or do any act which may be taken to indicate that it has any rights in any Background, other than its own Background, and subject to Clause 6.2 (Grant of Background licence) below nothing in this Agreement shall give it any right or interest in or title to any Background, other than its own Background.

- 6.2 Each Participant and its Affiliates hereby grants a non exclusive irrevocable royalty free licence to use such of its Background that it wishes to make available in connection with the Project to the Researcher and each other Participant(s) and their Affiliates for the purposes of the commercialisation or exploitation of the Project Results. The Researcher hereby grants the Participants and their Affiliates a non-exclusive irrevocable royalty free licence to use such of its Background as is necessary in connection with the Project.
- 6.3 Each Party shall take reasonable steps to ensure that any Background or other information which it may provide (for example pursuant to Clause 8.3) (Provision of information) is accurate and not misleading.

7. FOREGROUND

- 7.1 The Researcher shall ensure that all work related to the Project shall only be undertaken by employees of the Researcher and / or by persons whose contracts with the Researcher provide for the assignment to the Researcher by such persons of all Intellectual Property Rights created by them during the course of their duties under such contracts.
- 7.2 All Foreground shall be the property of the Researcher from the date of its creation.
- 7.3 The Researcher grants to each Participant and its Affiliates and its CoVenturers an irrevocable, worldwide non-exclusive, royalty free licence to use the Foreground (and any Background of the Researcher incorporated into the Foreground) subject to the provisions of Clause 7.3A (in the case of any Party whose core business includes commercialisation and exploitation of Intellectual Property Rights) from the date of its creation in connection with such Participant's, or any of its Affiliates' [or CoVenturers'] businesses (including for the commercialisation and exploitation of the Project in accordance with the provisions of the Agreement). This licence shall not be affected by termination of this Agreement or by a Participant's withdrawal from this Agreement pursuant to [Clause 10.2] (Project not timeously completed), save that such Participant shall have no right to a licence hereunder in respect of any Foreground created after the date of such Participant's withdrawal.

[For other options refer to menu of optional clauses (Section 6 – options for Implementation / Licensing)].

- 7.3A Notwithstanding the provisions of para 7.3 above (or any other provision of this Agreement) in the case of any Party whose core business includes commercialisation and exploitation of Intellectual Property Rights, such Party shall not be entitled to commercialise and exploit any Foreground **except** where, and to the extent, specifically directed to do so by the Steering Committee.
- 7.4 The Researcher shall indemnify each Participant and its Affiliates and its CoVenturers (the "Indemnified Parties") against any and all Claims incurred by the Indemnified Party in respect of any claim or action that the licensing of the Foreground (under Clause(s) 7.3 (Implementation), 7.5 (Licence grant including where Researcher or Participant not using best endeavours) or 10.3 (Licence grant where Researcher in default)) to any Participant or its Affiliates or CoVenturers or the use of the Foreground or the conduct of the Project by any of the Parties infringes the Intellectual Property Rights of any third party.

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- 7.5 The Researcher shall, at any time during the term of this Agreement or thereafter grant a licence to use the Foreground to:
- (a) any person upon such terms as the Steering Committee may require (to the extent that such terms do not prejudice the terms of any licence granted pursuant to Clause 7.3) as part of the commercialisation or exploitation of the results of the Project in accordance with Clauses 4.1(g) (Commercialisation of results); and / or Clause 4.10 (Parties to use reasonable endeavours to commercialise); and /or
 - (b) any Participant or its Affiliates or CoVenturers upon such terms as such Participant or its Affiliates or CoVenturers may require if Clause 4.4 (Researcher not using reasonable endeavours) or 4.5 (a Participant not using reasonable endeavours) or 4.10 (Parties to use reasonable endeavours to commercialise) applies.
- 7.6 Each Party shall keep the Foreground secret and confidential and shall not disclose or permit it to be made available to any person without the Steering Committee's prior written consent **save** (in the case of the Researcher) for such disclosures as are necessary or desirable for the purposes of the performance of the Researcher's obligations hereunder including the requirement to take active steps to commercialise/exploit the Project results (Clause 2.1(b)) and the entering into of any Foreground licences which the Researcher is permitted, or required, to grant hereunder.
- 7.7 In any dealings with its rights and obligations under this Agreement and/or its Intellectual Property Rights in all Foreground (collectively "Rights") (including any Licence(s) granted pursuant hereto) the Researcher shall ensure that any successor, assignee or other transferee in ownership is taken bound by, and acknowledges the obligation to adhere to and implement, all of the Researcher's obligations hereunder with respect to such Rights.

8. LIABILITIES OF PARTIES

- 8.1 Each Party hereto (the "Indemnifying Party") indemnifies and holds each other Party and its Affiliates, CoVenturers and contractors (the "Indemnified Parties") harmless from and against all Claims arising from or in connection with:
- (a) any loss, loss of use, recovery or destruction of, or damage to any property owned or leased by the Indemnifying Party (and, if the Indemnifying Party is the Researcher, the property of any person working on the Project); and/or
 - (b) Consequential Loss suffered by the Indemnifying Party or its Affiliates or contractors; and/or
 - (c) personal injury to or death or disease of the directors, officers and employees of the Indemnifying Party (and if the Indemnifying Party is the Researcher, any person carrying out any work on the Project);

arising out of or in connection with the performance, misperformance or non-performance of this Agreement, howsoever arising and by whomsoever caused regardless of any negligence or breach of duty (statutory or otherwise), by the Indemnified Parties or any of them.

- 8.2 Notwithstanding Clause 15.7 (Rights of third parties), any relief from liability, hold harmless, indemnity or benefit created in favour of a third party pursuant to Clause 6.2 (Grant of Background licence), Clause 7.4 (Researcher indemnity re. use of Foreground) or Clause 8.1 (Hold harmless) or Clause 8.3 (Provision of information) is intended by the Parties to be enforceable by such third party, in accordance with their terms by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 8.3 Each Participant has agreed to participate in the Project on the basis that it may be able to provide useful information to other Parties to this Agreement (the Recipients) based on its previous experience and expertise. Without prejudice to the provisions of Clause 6.3 (Reasonable efforts to ensure accuracy of information) said Participant and its Affiliates and CoVenturers shall not have any liability whatsoever, (including, without limitation, liability in contract or in tort including in negligence), for any information, assistance and/or advice provided to any Party or any of its Affiliates or CoVenturers in connection with or arising from its participation in the Project nor in respect of any other involvement of any kind in the Project by said Participant or its Affiliates or CoVenturers, and each Recipient shall indemnify and hold harmless said Participant and its Affiliates and CoVenturers from and against any and all Claims incurred by each Recipient or any of its Affiliates and its CoVenturers in connection with or arising from the provision by said Participant or its Affiliates or CoVenturers (or their employees or agents) of any such information, assistance and/ or advice, regardless in all cases of said Participant's breach of the terms of this Agreement, any other agreement between the Parties relating to the subject matter hereof, breach of duty, and/or negligence.
- 8.4 No provision in this Agreement shall seek to exclude or limit the liability of any Party for fraudulent misrepresentation or wilful misconduct.

9. SIMILAR RESEARCH

Any Party may at its own expense, at any time during the term of this Agreement conduct its own independent research directed towards similar objectives as those of the Project (provided such research does not use the Foreground, other than as permitted under Clause 7.3 (Licensing options), the Background of any other Party, or Confidential Information disclosed to such Party by another Party pursuant to this Agreement). No Party to this Agreement shall have any rights in any such independent research carried out by any other Party by virtue of its participation in the Project.

10. TERM, TERMINATION AND WITHDRAWAL

- 10.1 This Agreement shall be effective on the date hereof (as appearing or set out at the start of the Agreement above) and, subject to any extension pursuant to Clause 4.1 (Steering Committee decision to extend Term) or earlier termination pursuant to Clause 10.4 (Automatic termination), shall continue until and shall automatically terminate on the date of completion of the Project in accordance with the Project Proposal.
- 10.2 A Participant may withdraw from this Agreement by not less than thirty (30) days' prior written notice to all Parties if the Project, or any part thereof is not completed to the Steering Committee's satisfaction within four (4) months of the date specified for completion of the same in the Project Proposal. Subject to Clause 10.5 (Participant entitled to refund where Project fails to start), a Participant who withdraws shall have no rights or liability (other than pursuant to Clause 4.4 (Researcher not using reasonable endeavours), Clause 5 (Confidentiality) or Clause

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7.3 (Options for licensing)) pursuant to this Agreement from the date of such withdrawal save in respect of any antecedent breach. A withdrawing Participant shall remain liable to make contributions to payments due prior to the date of its withdrawal.

10.3 If any Party (the "Defaulting Party") commits a material breach of this Agreement, and does not, within fourteen (14) days of receipt of notice of the breach from the Steering Committee (if the same be capable of remedy), remedy such breach, the Defaulting Party shall from the date of such breach until the date of remedy thereof (if the breach is capable of remedy) to the satisfaction of all the other Parties have no rights whatsoever under this Agreement, and, without limitation, shall not be entitled to attend and vote at meetings of the Steering Committee, and shall not be entitled to any benefit from the commercialisation or exploitation of the results of the Project but shall remain subject to their obligations and liabilities under this Agreement.

10.3A Additionally, where the Researcher is a Defaulting Party, the Researcher grants to the other Parties (excluding any other Defaulting Party) and their Affiliates and CoVenturers an irrevocable worldwide non-exclusive royalty free licence to utilise the Foreground for in-house or further research and development purposes including (for the avoidance of doubt) the right to customise or otherwise utilise the Foreground for the benefit of any such Party. Where the breach has not been remedied in accordance with this Clause, the provisions of Clause 4.3 (Expulsion of Party) shall apply.

10.3B For the avoidance of doubt, where any Defaulting Party shall have remedied its breach, timeously, the rights of, and the benefits available to, such Defaulting Party shall be reinstated.

10.4 This Agreement shall automatically terminate on the date:

- (a) all Parties withdraw from the Agreement;
- (b) the Steering Committee decides that the Project cannot be completed within the budget set out in the Project Proposal, and the Steering Committee does not approve an increase in such budget, and no alternative funds are available;
- (c) the Researcher convenes a meeting of its creditors or a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with its creditors or if it shall be unable to pay its debts, or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of its business or assets or if a petition is presented or meeting convened for the purposes of considering a resolution or other steps are taken for the winding up of the Researcher;
- (d) six (6) months after the signature of the Agreement by all the Parties if the Project has not started by such date unless otherwise agreed by the Parties.

whichever is the earliest.

10.5 If this Agreement is terminated in accordance with Clause 10.4(d), the Researcher shall, within fourteen (14) days of termination, repay each Participant all sums paid to Researcher hereunder.

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- 10.6 The terms of Clauses 2.1(b), 2.6, 4.4, 4.5, 5, 6.2, 7, 8, 10.3, 12, 13, 15.4 and 16 (where applicable) shall survive termination of this Agreement.
- 10.7 Upon termination of the Agreement pursuant to this Clause, the Researcher shall use its best endeavours to co-operate and procure, that it and its employees and independent contractors co-operate with any reasonable request by Participants for access to or copies of documentation or materials relating to the Project and its output and, where requested, to attend and participate in any meeting or debriefing in connection with the Project or its output.
- 10.8 Upon termination, the Researcher shall refund to each Participant any unspent contribution. Such refund of unspent contribution shall be made in proportion to the Participant contributions made.

11. **FORCE MAJEURE**

No failure or omission by any Party to carry out or observe any of the stipulations, conditions or obligations to be performed hereunder shall, (except for failure to pay) be deemed to be in breach of this Agreement for so long as such failure or omission arises from any cause beyond the reasonable control of that Party.

12. **ASSIGNMENT**

- 12.1 Each Participant may assign and sub-license any of its rights obligations, interests and liabilities under this Agreement to any of its Affiliates or CoVenturers.
- 12.2 Subject to Clause 12.1, no Participant shall assign or otherwise transfer nor purport to assign or otherwise transfer any of its rights hereunder without the prior consent of the Steering Committee (not to be unreasonably withheld or delayed).
- 12.3 The Researcher shall not assign, sub contract or transfer, nor purport to assign, sub contract or otherwise transfer any of its rights or obligations hereunder [other than to any sub-contractor(s) identified in the Proposal].

13. **TAXES**

- 13.1 The Researcher shall pay all taxes assessed against it in connection with this Agreement and shall indemnify the Participants or their Affiliates or CoVenturers from any and all Claims relating to taxes on income or profits and other taxes assessed or levied against the Researcher or against any Participant or its Affiliates or CoVenturers on account of any payment made or due to the Researcher or its contractors hereunder. Additionally, the Researcher shall defend, indemnify and hold the Participants or its Affiliates or CoVenturers harmless from all taxes assessed or levied against or on account of fees, wages, salaries or other benefits paid to the Researcher's employees or consultants or employees of its sub-contractors, and taxes assessed or levied against or on account of any property or equipment of the Researcher or its sub-contractor including customs, excise, occupation and other like tax imposts, any fines, penalties or interest thereon.
- 13.2 Each Participant shall be responsible for payment of all applicable Value Added Taxes chargeable on goods or services supplied by the Researcher provided such charges are covered by a valid tax invoice as is required under UK Value Added Tax legislation.

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14. NOTICES AND WORK VARIATION

14.1 Any notice required to be given pursuant to this Agreement shall be in writing and may be given by delivering the same by hand at, or by sending the same by prepaid first class post, or by facsimile to the relevant addresses as set out in Clause 14.2 below, or to such other address as any Party may notify in writing to the other Parties from time to time. Any such notice given as aforesaid shall be deemed to have been given and received:

- (a) if delivered by hand, at the time of delivery ; or
- (b) if sent by first class post, on the second day following the day of sending; or
- (c) if sent by facsimile at 10:00 hours UK time on the next day following the day of its faxing provided that the sender's transmission report indicates successful transmission to the correct fax number and that a copy of the faxed notice is also posted by first class post to the intended recipient.

Provided that, if a notice is deemed to have been received pursuant to the above provisions on a day other than a Working Day, or after 17-00 on any Working Day, it shall not be effective until 09-00 on the first Working Day following the date of receipt.

14.2 Any notice given hereunder by any Party shall be similarly given to all other Parties, and any such notice shall be given to the Parties at their following respective addresses (it being noted that the inclusion of an e-mail address is for information purposes only - and not as a formal mechanism for serving notice under Clause 14.1):

The Researcher:	<i>Name</i> <i>Full Address</i> Tel no: , e-mail:
Participants' Details:	<i>Name</i> <i>Full Address</i> Tel no: , e-mail:
	<i>Name</i> <i>Full Address</i> Tel no. , e-mail:
	<i>Name</i> <i>Full Address</i> Tel no: , e-mail:

14.3 Any Party hereto may request a variation of the work forming part of the Project and, for that purpose, - subject to the approval of the Steering Committee pursuant to Clause 4.1(d) (Changes to Project proposal) and to a variation order in the form reproduced at Schedule 4 being agreed and entered into - the provisions of this Agreement shall apply in full to such variation.

15. GENERAL LEGAL PROVISIONS

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15.1 This Agreement constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the Parties in relation to the subject matter hereof.

Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on and shall have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement as a warranty.

15.2 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.

A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.

15.3 This Agreement shall be binding upon and enure for the benefit of the Parties, their successors and permitted assigns.

15.4 This Agreement shall be governed by the laws of England and the Parties hereby irrevocably submit to the exclusive jurisdiction of the English courts.

15.5 Nothing in this agreement shall create or shall be construed as creating a partnership of any kind or an association or as imposing upon any Party any duty, obligations or liability of a partnership nature.

15.6 This Agreement may be executed in any number of counterparts and by different Parties hereto on separate counterparts, each of which when so executed shall be an original but all the counterparts shall together constitute one and the same instrument.

15.7 Subject to Clause 8.2 (3rd Party benefit), the Parties intend that no provision of this Agreement shall confer any benefit, nor be enforceable by any person who is not a Party by virtue of the Contracts (Rights of Third Parties) Act 1999 ("the Act"). Notwithstanding Clause 8.2 (3rd Party benefit), this Agreement may be rescinded or varied by the Parties without the consent of any third party, even if, as a result, that third party's right to enforce a term of the Agreement will be varied or extinguished.

15.8 During the term of the Project, the Researcher will permit each Participant or its Affiliates or CoVenturers access, at all reasonable times and at said Participant's or its Affiliates' or CoVenturers' expense, to witness the Project in progress at any such premises where the Project is being conducted.

16. BUSINESS ETHICS

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16.1 Each Party shall uphold the highest standards of business ethics in the performance of its responsibilities under this Agreement. Honesty, fairness and integrity shall be paramount principles in the dealings between the Parties.

16.2 Each Party agrees that it will not directly or indirectly receive from or give or offer or give to any other Party (or its Affiliates) or to other contractors or suppliers or to government officials or any other persons anything of material value which would be regarded as an improper inducement to any Party. Any breach of this obligation shall constitute a material breach of this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement on the day and year first above written.

For and on behalf of **[NAME OF RESEARCHER]**

By:
Title:
Signature:
Date:

For and on behalf of **[NAME OF PARTICIPANT 1]**

By:
Title:
Signature:
Date:

For and on behalf of **[NAME OF PARTICIPANT 2]**

By:
Title:
Signature:
Date:

For and on behalf of **[NAME OF PARTICIPANT 3]**

By:
Title:
Signature:
Date:

For and on behalf of **[NAME OF PARTICIPANT 4]**

By:
Title:
Signature:
Date:

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SCHEDULE 1

THE PROJECT PROPOSAL

[This attachment will be in the form of the fully completed ITF standard project proposal]

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SCHEDULE 2

FORM OF LATE PARTICIPANT'S AGREEMENT

THIS AGREEMENT is made the [] day of [] 200[]

BETWEEN

- (1) **[NAME OF RESEARCHER]** whose registered office is at [],
(the "Researcher") acting for itself and as agent for and on behalf of the
Participants; and
- (2) **[NAME OF LATE PARTICIPANT]** whose registered office is at []
(the "Late Participant")

WHEREAS

- (A) This Agreement is entered into pursuant to a Research Agreement (the "Research Agreement") relating to the "**[name of PROJECT]**" dated [] and made between the Researcher and those persons listed in Schedule 1 hereto (the "Participants").
- (B) The Late Participant wishes to become a party to the Research Agreement.

NOW THIS FORM OF LATE PARTICIPANT'S AGREEMENT WITNESSES as follows:

1. Terms defined in the Research Agreement shall (unless herein otherwise defined) have the same meanings in this Agreement.
2. The Late Participant hereby agrees to participate in and be bound by all the provisions of the Research Agreement in all respects as if it were a Participant and subject to the remaining provisions of this Agreement.
3. The Participants agree to be bound to the Late Participant as if the Late Participant was a Participant under the Research Agreement.
4. The Late Participant shall make the contributions to the funding of the Project as set out in Schedule 2 hereto.
5. This Agreement shall be governed by the laws of England and each of the Participants, the Researcher and the Late Participant hereby irrevocably submits to the exclusive jurisdiction of the English Courts.

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AS WITNESS whereof the Participants, by their agent the Researcher and the parties hereto have executed and delivered this Agreement the day and year first above written.

Executed
By **[name of RESEARCHER]**
By:

Director _____

Director / Secretary

Executed
By **[name of LATE PARTICIPANT]**
By:

Director _____

Director / Secretary

Schedule 1
The participants

Schedule 2
Late Participant's contributions

SCHEDULE 3

PROJECT FUNDING

1. Each Participant's contribution to the funding of the PROJECT is as set out below:

PARTICIPANT	CONTRIBUTION (£)
--------------------	-------------------------

2. Contributions shall be paid in the instalments set out below (expressed as a proportion of the Participant's total contribution) to the Researcher, free of all deductions, not later than thirty (30) days after the date of the Researcher's invoice.

PROPORTION (%)	DATE DUE
-----------------------	-----------------

**%

On the date of this Agreement

**%

**%

**%

On completion of the Project in accordance with the Project Proposal

- 3.. All amounts payable under this Agreement are exclusive of Value Added Tax, which shall be charged in addition where applicable.
4. All invoices shall be sent by the Researcher to the Participants at the addresses and containing the information set out below:
5. ITF shall be entitled to invoice the Researcher a 5% administration fee in accordance the Payment Schedule.

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DETAILS OF PARTICIPANTS' INVOICING REQUIREMENTS

Invoices to be submitted to:

[COMPANY NAME]	[FULL ADDRESS]
[COMPANY NAME]	[FULL ADDRESS]
[COMPANY NAME]	[FULL ADDRESS]
[COMPANY NAME]	[FULL ADDRESS]

