

DATED
2014

**WARNING THIS DOCUMENT
CONTAINS OPTIONAL CLAUSES
AND MUST BE EDITED BEFORE
USE**

[Insert name of relevant NG entity]

(1)

and

[Insert other Party name]

(2)

**RESEARCH AND DEVELOPMENT
COLLABORATION AGREEMENT**

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DATE OF

2013

PARTIES

- (1) **[Insert name of relevant NG entity]** (Company Number **[insert details]**) whose registered office is at **[•]** ("National Grid")
- (2) **[Insert company name]** (Company Number **[insert details]**) whose registered office is at **[•]** ("**[•]**")

[or] **[Insert name of university]**, **[a corporation incorporated by Royal Charter (insert number)]**¹ whose administrative offices are at **[•]** ("**[•]**")

BACKGROUND

The Parties (as defined below) wish to collaborate on a research project entitled "**[insert name of project]**" pursuant to the Governance Documents (as defined below). The Parties acknowledge and agree that this Agreement is made in compliance with the Governance Documents and 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:

[Academic Party] **[insert details of each of the initial academic Parties here]** and such other academic bodies as may be appointed as Academic Parties to this Agreement from time to time in accordance with its terms;

[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 conferences, seminars, tutorials and lectures; and in clause 9 "to Publish", "Publishing" and "Publication" are to be construed as references to Academic Publication;

Agreement: this document, including its Schedules, as amended from time to time in accordance with clause 16.9;

Background IP: any information, techniques, Know-how, software and materials and other Intellectual Property (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

¹ Note that all Universities are charities but some are incorporated by Royal Charter.

before, on or after the date of this Agreement) and which are: (i) in existence at the Effective Date, or (ii) created after the Effective Date other than in the course of performing the Project;

Business Day: Monday to Friday (inclusive) except bank or public holidays in England;

[Commercial Party: National Grid, *[insert details of each of the initial commercial Parties here]* and such other entities as may be appointed as Commercial Parties to this Agreement from time to time in accordance with its terms;]

Confidential Information: in respect of each Party means: any and all information directly or indirectly disclosed or made available (whether orally, in electronic or other written form, by demonstration or otherwise howsoever) by or on behalf of that Party to the other Party in connection with the Project (whether created or disclosed before, on or after the date of this Agreement), that is either identified as confidential before or at the time of disclosure or which a reasonable person would consider to be confidential taking into account the nature of the information and the circumstances surrounding its disclosure. For the avoidance of doubt information disclosed, made available, received or created by or on behalf of a Party's Group Company shall be treated for the purposes of this Agreement as being disclosed, made available, received or created by that Party;

Contribution: any Financial Contribution and Non-Financial Contribution;

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

[Escrow: the deposit with, and retention by the Escrow Agent of, the Source Code Materials;]

[Escrow Agent: [NAME OF ESCROW AGENT];]

[Escrow Agreement: an escrow agreement in the form attached to this Agreement as [Schedule [] – *suggest that NCC Group's standard escrow agreement is used*] which is to be entered into by the Parties and the Escrow Agent in accordance with clause **8**;]

[External Funding: any funding or assistance provided for the Project or to either Party for use in the Project by any Funding Body [as further described in []];]

Financial Contribution: the financial contribution to be made by a Party to the Project, as set out in Schedule 1 to this Agreement;

[Funding Body: *insert details of any body that provides External Funding;*]

[Funding Conditions: the terms on which the Funding Body provides any External Funding, copies of which are attached to this Agreement as Schedule 3];

Good Data Management Practices: the practices and procedures set out in Schedule 5;

Good Industry Practice the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;

Governance Documents the [Gas/Electricity] Network Innovation Allowance Governance Document;

Group Company: any undertaking which is, on or after the date of this Agreement from time to time, a subsidiary undertaking of either Party, a parent undertaking of either Party or a subsidiary undertaking of a parent undertaking of either Party, as those terms are defined in section 1162 of the Companies Act 2006;

[Hardware Loan Services: as defined in the Project Plan;]

[Hardware Loan Fee: as defined in the Project Plan;]

Intellectual Property ("IP"): patents, trade marks, service marks, registered designs, copyrights, database rights, utility models, design rights, rights in Know-how and 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 and the right to apply for any of the above;

Key Personnel: in the case of [University or Commercial Entity], [??? and ???]; in the case of University or Commercial Entity, [??? and ???];

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;

| | |
|--|--|
| [Lead Party: | <i>insert name of the lead Party. (NB: This should be consistent with the offer of External Funding)];</i> |
| Location: | the location(s) at which the Project will be carried out as set out in the Project Plan; |
| Non-Financial Contribution: | the non-financial contribution (including, without limitation, the provision of human resources, materials, facilities and equipment) to be made by a Party to the Project, as set out in the Project Plan; |
| Network Innovation Allowance ("NIA"): | a set Ofgem annual allowance that provides funding of smaller scale research, development and demonstration projects; |
| Network Licensee(s): | the holder of a Gas Transporter or Electricity Transmission Licence who is regulated through the RIIO (Revenue = Incentives and Innovation and Outputs) price control framework; |
| Ofgem: | the Office of the Gas and Electricity Markets; |
| Other Personnel: | all persons, other than those employed by National Grid, involved in the management and performance of the Project whether employed or engaged by the other Party any sub-contractor or otherwise including all Key Personnel of [INSERT NAME]; |
| Parties Personnel: | all persons involved in the management and performance of the Project whether employed or engaged by a Party, any sub-contractor or otherwise including all Key Personnel; |
| [Party Software: | the [regulatory approved software for] [insert description of software] defined in the Project Plan;] |
| [Payment Plan: | the arrangements under which each Party, in return for its rights to exploit the Results, shall pay the other Party, as set out in Schedule 6;] |
| Project: | the project described in the Project Plan; |
| Project Manager: | the individual appointed from time to time by the Lead Party (following approval from the Steering Committee) as the project manager for the Project[, and approved by the Funding Body in accordance with the Funding Conditions]; |
| Project Period: | the period described in clause 2.1; |
| 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];

Relevant Results: as required by the Governance Documents the element of the Results required to be disclosed as more particularly described in Schedule 9

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

[Software Licence: the licence of the Party Software granted by a Party to the other Party attached at Schedule 11;

[Source Code Materials: the source code of any software forming part of the Results [including any Party Software and/ or Third Party Software] and all technical information and documentation required to enable the Parties to modify and operate such software;

Steering Committee: the individuals nominated by each Party in accordance with clause 3.1 to supervise the carrying out of the Project;

[Support Services: as defined the Project Plan];

Term: the duration of this Agreement expiring [] calendar years following the execution date of this Agreement;

Third Party: any person that is not a Party; and

[Third Party Software: as defined in the Project Plan.

1.2 In this Agreement, unless otherwise expressly provided or unless the context otherwise requires:

1.2.1 references to the singular include the plural and vice versa, to any gender include all genders, to persons include companies, partnerships, government departments and agencies and all other forms of body corporate or unincorporated;

1.2.2 references to laws and statutory provisions shall include reference to any subordinate legislation made pursuant to them and shall be construed as referring to those laws, provisions and subordinate legislation as respectively amended or re-enacted from time to time;

- 1.2.3 any undertaking by a Party not to do an act or thing shall be deemed to include an undertaking not to authorise such act or thing to be done by another person;
- 1.2.4 references to the clauses and Schedules are to the clauses and schedules to this Agreement and references to paragraphs are to paragraphs of the relevant Schedule;
- 1.2.5 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;
- 1.2.6 the rule known as the ejusdem generis rule will not apply and accordingly the meaning of general words introduced by the word "other" or a similar word or expression will not be restricted by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things; and
- 1.2.7 references to the Parties are to the Parties to this Agreement and shall include their respective successors in title and permitted assigns.
- 1.3 Where this Agreement refers to an individual appointed by a Party to a particular position pursuant to this Agreement (including without limitation any appointment to the Steering Committee or any Key Personnel) then the appointing Party shall procure that the individual concerned complies with this Agreement as if they were a Party to it.
- 1.4 [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.
- 1.5 [If there is any conflict between the terms of this Agreement and the Funding Conditions, this Agreement shall prevail in relation to the arrangements as between the Parties, but it shall not affect the Parties' respective obligations to the Funding Body under the Funding Conditions.
- 1.6 References to a "Party" or to the "Parties" shall mean either Party to this Agreement and/or both Parties to this Agreement.

2. THE PROJECT

- 2.1 The Project [shall begin on][began on] the Effective Date and shall continue until the completion of the Project [excluding the Hardware Loan Services], or until any other date agreed in writing between both of the then current Parties to this Agreement. If this Agreement is entered into after the Effective Date, it

shall apply retrospectively to work done in relation to the Project on or after the Effective Date. Subject to clauses 12 and 14, this Agreement shall remain in full force and effect for the duration of the Project [(subject to any continuing obligation to provide the Hardware Loan Services)].

2.2 [The Hardware Loan Services shall commence on the completion of the Project and shall be provided for a period of two years unless terminated earlier in accordance with clauses 12 or 14. All applicable terms of this Agreement shall continue to take effect until the termination or expiry of the Hardware Loan Services.]

2.3 Each Party undertakes to the other Party to:

2.3.1 make its Contribution to the Project in accordance with the Project Plan and Schedule 1;

2.3.2 [comply with its obligations under, and the conditions of, the Funding Conditions;]

2.3.3 [carry out the Project in accordance with the Funding Conditions;

2.3.4 [notify each Party in accordance with clause 16.1 immediately if it receives any notice or request from a Funding Body;

2.3.5 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;

2.3.6 use all reasonable endeavours to obtain all regulatory and ethical licences, consents and approvals necessary to allow it to make its [Non-Financial] [and/or] Contribution to the Project and carry out the tasks allotted to it in the Project Plan;

2.3.7 ensure that its obligations under this Agreement are performed with all due diligence, care and skill by appropriately qualified individuals in accordance with Good Industry Practice; and

2.3.8 ensure that its (and its subcontractors' of any tier and its agents') 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; and comply with the Good Data Management Practices;

2.4 Although each Party shall use reasonable endeavours to carry out the Project in accordance with the Project Plan, neither Party undertakes that any research shall lead to any particular result, nor does it guarantee a successful outcome to the Project.

2.5 Each Party warrants to the other Party that:

2.5.1 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;

2.5.2 [it has the right, power, title and authority to license its Background IP on the terms of this Agreement; and

2.5.3 [it shall pay all fees necessary to maintain the registered rights that form part of the Background IP it licenses under this Agreement.]

2.6 Neither Party shall introduce into the other Party's or its Group Companies' computer systems anything, including any computer program code, virus, authorisation key, licence control utility or software lock, which is intended by any person to, is likely to, or may:

2.6.1 impair the operation of the Party Software or any computer systems or programs in the possession of the other Party or its Group Companies; or

2.6.2 cause loss of, or corruption or damage to, any program or data held on the other Party's or its Group Companies' computer systems.]

2.7 [Each Party warrants that:

2.7.1 the Party Software[, Third Party Software] and any other software, electronic or magnetic media, hardware or computer system recommended by a Party for use in connection with the Project [or the use of the Results] shall not cause any damage to, loss of or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic media, hardware or computer system used by, for or on behalf of the other Party or its Group Companies, on which it is used or with which it interfaces or comes into contact;

2.7.2 any relevant Party Software is owned by or licensed to it; and

2.7.3 the relevant Party has all necessary rights to grant the licences granted under this Agreement.]²

2.8 [Each Party shall, and shall procure that its employees and contractors shall, while on any premises of either Party (or any premises to which it is given access by either Party) (the "**Controlling Party**"), comply with all relevant rules and regulations relevant to such premises and the work being undertaken (including health and safety policies), laid down by the Controlling Party from time to time for the behaviour of its own employees and contractors, and any other reasonable requirements of the Controlling Party. Each Party shall remove any employee or contractor whom the other Party can demonstrate has failed to comply with such rules, regulations and requirements.

2.9 A Party shall indemnify any affected Party in full for all loss and damage howsoever arising to [that Party's employees, contractors or property caused by its personnel while they are on the affected Party's premises (or any premises to which it is given access by the affected Party)].

3. **PROJECT MANAGEMENT**

3.1 There shall be a Steering Committee made up of one representative nominated by each Party (that Party's "**Nominee**"). Each Party shall also be entitled to appoint a deputy/alternate to their Nominee (a "**Proxy**") who shall be entitled to attend and vote at the Steering Committee in the absence of the Nominee of that Party (and to replace this Proxy at any time on written notice to the other Party). 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 shall be 60% of the members of the Steering Committee or their alternate, present in person or by tele-conference, video-conference or other technology mentioned above.

3.3 [**insert name**]³ (if present at a meeting) or, in his absence, any other individual the members of the Steering Committee may from time to time agree, shall chair meetings of the Steering Committee.

² Clauses 2.6 and 2.7 are only relevant where the project involves software development project and they will need amendment depending on which parties are supplying software

³ To be agreed on a case by case basis

- 3.4 The Parties shall ensure that the Steering Committee meets at least every [3]⁴ months at venues to be agreed, and in default of agreement at [insert location]⁵, or at any other time at the request of either Party to the Project Manager specifying in reasonable detail the reason why the meeting is required. Meetings of the Steering Committee shall be convened with at least [twenty-one (21)]⁶ days written notice in advance. That notice must include an agenda. Minutes of the meetings of the Steering Committee shall be prepared by the chair of the meeting and sent to each Party within 14 days after each meeting.
- 3.5 Each Party shall provide the Project Manager with [monthly][quarterly][annual]⁷ reports summarising the progress of the Project and the Results, and the Lead Party shall ensure that the Project Manager keeps both Parties informed about the progress of the Project and the Results. A copy of each Party's [monthly][quarterly][annual]⁸ report shall be circulated to each member of the Steering Committee with the written notice for the relevant meeting by the Project Manager. Each Party shall [use its reasonable endeavours to]⁹ ensure its Nominee (or his/her Proxy) attends each meeting of the Steering Committee convened in accordance with this clause 3.
- 3.6 [Each Party shall, through its Nominee (or his/her Proxy), have one vote in the Steering Committee. Decisions shall be taken by a simple majority of a quorate meeting of the Steering Committee except where a decision necessitates a change to the Project Plan or a change to the allocation of any funding or change to any Contribution. In any of those cases, any decision must be unanimous and may only be made where the Nominees (or their Proxies) of both Parties are present, whether by video conference, in person or telephone. In a tied vote, the chairman shall [not] have a casting vote]¹⁰.
- 3.7 [In addition to his duties under the Funding Conditions,]¹¹ the Project Manager shall:
- 3.7.1 [be the primary conduit for exchanges of information with the Funding Body]¹²;

⁴ Insert an appropriate frequency for the Steering Committee to meet

⁵ Insert an appropriate venue for the Steering Committee to meet

⁶ Time to be considered on a project basis

⁷ Delete as appropriate

⁸ Delete as appropriate

⁹ Consider whether the nominee of each party (including National Grid) should be under an absolute obligation to attend the meeting of the Steering Committee. If so, delete the drafting in square brackets. Please consult with Legal if in any doubt

¹⁰ This clause may need amendment – discuss with legal before release of draft

¹¹ To be included only where there is third party funding such as TSB, if no such funding the square brackets can be deleted

¹² To be included only where there is third party funding such as TSB, if no such funding the square brackets can be deleted

- 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]¹³;
 - 3.7.4 be responsible for coordinating the implementation of decisions taken by the Steering Committee;
 - 3.7.5 [prepare progress reports as required by the Funding Body;]¹⁴ and
 - 3.7.6 monitor the progress of the Project.
- 3.8 The Parties agree and acknowledge that in order to implement the Project the Steering Committee may take decisions in connection with the terms of this Agreement. Decisions of the Steering Committee regarding:
- 3.8.1 amendment to the background check requirements provided at Schedule 8;
 - 3.8.2 the decision as to whether to reject the Other Personnel from being involved in the project or dismiss the Other Personnel from the Project pursuant to Schedule 8 paragraphs 1.2 and 1.4;
 - 3.8.3 whether a Party shall be permitted to audit the other Party pursuant to Schedule 8 paragraph 1.5 and clause 6 to ensure compliance with Schedule 8 paragraph 1.5;
 - 3.8.4 amendment and updates to the anti-bribery and anti-corruption policies provided for in Schedule 7;
 - 3.8.5 whether this Agreement shall be terminated as a result of Prohibited Acts as defined within, and pursuant to clause 13 and Schedule 11; and
 - 3.8.6 material changes to the Project and changes to the Results to be delivered;

shall be subject to the unanimous approval of the Steering Committee (except for decisions in respect of 3.8.5 above which does not require approval or a vote from the Offending Party as defined in Schedule 11).

¹³ To be included only where there is third party funding such as TSB, if no such funding the square brackets can be deleted

¹⁴ To be included only where there is third party funding such as TSB, if no such funding the square brackets can be deleted

4. **BACKGROUND CHECKS**

National Grid shall carry out, and the Parties shall ensure that the Other Personnel shall comply with, the background check requirements as set out in Schedule 8.

5. **FINANCIAL CONTRIBUTION[, EXTERNAL FUNDING] and PAYMENT PLAN (if applicable)**

[The allocation of the External Funding shall be as set out in the Project Plan unless the Parties unanimously agree otherwise in writing.]¹⁵ Each Party shall pay its Financial Contribution to the Project in accordance with Schedule 1 within [forty two (42)]¹⁶ days after receipt by that Party's accounts payable department of an invoice for the same provided that it has been submitted in accordance with that Schedule. 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 confirming that the costs and expenses for which payment is claimed have been reasonably and properly incurred in the performance of the Project and are recoverable costs and expenses under this Agreement. The Party seeking recovery of such costs and expenses shall provide reasonable evidence of such costs and expenses with each such invoice. For invoices billed to National Grid, a party must send invoices to the following address and must include a purchase order number:

Accounts Payable

National Grid Shared Services

PO Box 7004

Wolverhampton

WV1 9YR OR to send via electronic methods to:

ngrid.invoices@edmgrou.com

5.1 A Party making a Financial Contribution exclusive of VAT shall, unless any VAT exemption applies, pay such VAT or similar tax at the rate from time to time prescribed by law.

5.2 If either¹⁷ Party fails to make any payment due to the other 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 judgment) on the amount outstanding, on a daily basis at the rate of two per

¹⁵ To be included only where there is third party funding such as TSB, if no such funding the square brackets can be deleted

¹⁶ This is National Grid standard but if commercially agreed and achievable by National Grid, this can be amended.

cent per annum above the London 3 month Interbank Offered Rate from time to time in force. The Parties agree that this is a substantial remedy for the purposes of the Late Payments of Commercial Debts (Interest) Act 1998 (as amended) and that the default interest rate specified pursuant to that Act shall not apply. That interest shall be calculated from the date of last date for payment to the actual date of payment, both dates inclusive, and shall be compounded quarterly. The Party that is late paying shall pay that interest on demand.

- 5.3 Except as set out in the Project Plan, each Party shall own all equipment purchased or constructed by it, or for it, using any Financial Contribution[or any External Funding]¹⁸.
- 5.4 The financial arrangements for the Project shall be overseen by the Steering Committee[and shall be as set out in the Funding Conditions]¹⁹.
- 5.5 [Claims for any External Funding shall be made through the Project Manager. Each Party shall 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 Party shall 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.]²⁰
- 5.6 [The Lead Party shall, within forty two (42) 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.]²¹
- 5.7 [Each Party shall 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. The Lead Party shall, within forty two (42) days after receipt of such overpayment or repayment, pay such amounts back to the Funding Body or re-allocate it to the correct Party as the case may be. Each Party shall pay to the Funding Body any payments that are to be made by that Party in order to comply with the Funding Conditions.] [The other Party shall 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.]²²²³

¹⁸ To be included only where there is third party funding such as TSB, if no such funding the square brackets can be deleted

¹⁹ To be included only where there is third party funding such as TSB, if no such funding the square brackets can be deleted

²⁰ To be included only where there is third party funding such as TSB, if no such funding this sub clause can be deleted

²¹ To be included only where there is third party funding such as TSB, if no such funding this sub clause can be deleted

²² Delete where National Grid is not the Lead Party

- 5.8 The Lead Party shall ensure that the Project Manager prepares and submits an account of all income and expenditure in connection with the Project every six months to the Steering Committee in respect of income and expenditure for the preceding six month period.
- 5.9 The Lead Party shall ensure that the Project Manager allows an independent chartered accountant appointed by either Party, at that Party's expense, to examine the accounts and records of the Project Manager relating to the Project provided:
- 5.9.1 at least [fourteen (14)] days written notice is given in advance to the Project Manager and not more than [1] examination is required per Party in any [twelve (12) month] period;
 - 5.9.2 the inspection or examination takes place during the Project Manager's normal working hours; and
 - 5.9.3 the inspecting Party and its accountant shall keep confidential any information that it may acquire in the exercise of its rights under this clause.
- 5.10 [Each Party shall pay the other Party the amounts due by it in accordance with the Payment Plan. A Party to which the other 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 Intellectual Property in the Results provided:
- 5.10.1 at least [fourteen (14)] days written notice is given in advance to the Party whose accounts and records are to be inspected and not more than [1] examination is required in any [twelve (12) month] period;
 - 5.10.2 the inspection or examination takes place during that Party's normal working hours; and
 - 5.10.3 the inspecting Party and its accountant shall keep confidential any information that it may acquire in the exercise of its rights under this clause.]²⁴
- 5.11 [In consideration for either Party carrying out the Hardware Loan Services the other Party undertakes to pay the providing Party its' portion of the Hardware Loan Fee in accordance with the arrangement set out in the Project Plan]²⁵

²³ To be included only where there is third party funding such as TSB, if no such funding this sub clause can be deleted

²⁴ The payment plan appears to be intended to deal with payments in return for the commercial use of Results and associated Background IP under agreed licences. It is not intended to set out the specific funding contributions to be provided as these should be contained in Schedule 1. If not such fees/royalties have been agreed then Payment Plan references should be deleted or the Schedule should be marked specifically as "Not Applicable".

6. **AUDIT ACCESS**

- 6.1 Each Party shall keep and maintain accurate records relevant to this Agreement, and the Project in accordance with good industry practice for the term of this Agreement provided at clause 2, and for a period of 6 years following termination of this Agreement. Each Party shall provide the other with such copies of them as both Parties may reasonably request from time to time.
- 6.2 Throughout the Term and for 12 months after its termination or expiry, each Party shall allow the other Party through their own personnel or a professionally qualified independent auditor to have escorted access to all of that Party's systems, premises, equipment, materials, facilities, Parties Personnel and relevant records (and shall procure access to the systems, premises, personnel and relevant records of its sub-contractors) for the purposes stated below. The Parties shall give not less than five (5) Working Days notice in writing of such requirement for access except in the case of: (i) any emergency, including where a Party reasonably suspects a fraud has occurred, in which case that Party shall be entitled to provide one (1) hour's notice; or (ii) pursuant to Schedule 8 paragraph 1.5 in which case the timescales set out in that clause shall apply). Such access shall be provided for the purposes of:
- 6.2.1 inspecting any part of the Project (including inspecting any part of the processes used to produce any Results);
 - 6.2.2 conducting a comparison audit of the Project against other providers of comparable services or deliverables which may include in relation to cost and quality;
 - 6.2.3 confirming the accuracy of any charges incurred in the Project;
 - 6.2.4 identifying suspected fraud;
 - 6.2.5 confirming that, that Party's system protects the confidentiality and security of data, including both Parties' Confidential information;
 - 6.2.6 confirming that the Party is complying with the Seventh Data Protection Principle;
 - 6.2.7 inspecting records of all checks carried out in respect of Other Personnel pursuant to Schedule 8 paragraph 1.5;
 - 6.2.8 dealing with any request of OFGEM or any other applicable regulatory body; or
 - 6.2.9 otherwise confirming compliance with the terms of this Agreement,

²⁵ To be used only where there is a concept that a party keeps equipment and supplies services after completion

and for the avoidance of doubt any inspection carried out pursuant to this clause 6.2 shall not relieve the relevant Party of any of its obligations under this Agreement.

- 6.3 Should any audit or inspection carried out by a Party reveal that the other Party has been overcharged, the Party who has overcharged shall reimburse to the other Party the amount of the overcharge within ten (10) Working Days of the date that the other Party notifies that Party of the overcharge.
- 6.4 Should a Party disagree with the notified overcharge, whether partially or completely, the relevant Party shall have the opportunity to make its own enquiries but shall revert to the Party within fifteen (15) Working Days of the date of notification with its findings. Should the Parties fail to reach a compromise under this provision the matter shall be referred for resolution in accordance with clause 16.12.
- 6.5 Each Party shall be solely liable for its own costs and expenses in respect of any audit carried out in accordance with this clause 6, save that if it is found that, after completion of the audit, either Party has been overcharged by more than 10% on any one invoice or 10% of the Contribution or other relevant charges payable in relation to the Project, the Party shall, without prejudice to its other rights and remedies, be entitled to recover its costs in relation to such audit from the Party that has overcharged.
- 6.6 Each Party shall provide to the other Party all reasonable assistance in the carrying out of such audit, whilst the relevant Party and its auditor shall ensure that any Confidential Information obtained in the course of the audit concerning a Party's business is kept confidential in accordance with clause 10 and is not used for any purpose other than the proper conduct of the audit.
- 6.7 Where a Party has reasonable grounds to believe that a fraud may have been or is being committed by or otherwise involving the other Party (or its sub-contractors, suppliers, agents and Parties Personnel) the relevant Party shall (at its sole cost and expense) provide all reasonable assistance to the other Party in carrying out any investigation of the suspected fraud. This may include the provision of any data, records, materials and access to premises and personnel to the relevant Party as the Party may determine in its sole discretion is reasonably necessary for the purposes of its investigation of the suspected fraud.

7. USE AND EXPLOITATION OF INTELLECTUAL PROPERTY

- 7.1 This Agreement does not affect the ownership of any Intellectual Property in any Background IP or in any other technology, design, work, invention, software, data, technique, know-how, or materials that are not Results. The Intellectual Property in them shall 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.

7.2 Each Party grants the other Party a royalty-free, [perpetual and irrevocable]²⁶ non-exclusive licence to use its Background IP during the Term only for the purpose of carrying out the Project. Neither Party may grant any sub-licence to use the other Party's Background IP except:

7.2.1 that a 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 either Party's Background IP for the purpose of carrying out the Project; or

7.2.2 to the extent that any such Background IP is required to use and exploit the Results in accordance with and for the purposes set out in the licence granted at clause 7.8.

7.3 Where any Result is created or generated by both Parties jointly, the Intellectual Property in that Result shall be owned by both Parties in shares that are in proportion to the effort made including any Financial Contribution and work done in the creation of that Result. The owners may take such steps as they may decide from time to time, at their proportionate expense (in such proportions that reflect the proportion of intellectual property ownership), 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 either one of the owners does not wish to take any such step or action, the other owner may do so at its expense, and the Party not wishing to take such steps or action shall provide, at the expense of the Party making the request, any assistance that is reasonably requested of it.

7.4 The Party that independently creates or generates any Result shall 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 student or contractor shall ensure that the student and/or the contractor (as the case may be) 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 7. For the avoidance of doubt Results created or generated by a

²⁶ The scope of the licence is not set out in the NIA Governance Documents. It will be determined on a case by case basis

seconded shall be treated as being created or generated by the Party to whom that individual is seconded at the time that the Results are created or generated.]²⁷

- 7.5 Each Party shall notify the Project Manager promptly after identifying any Result that it believes to be patentable or capable of protection by any other similar registered Intellectual Property right, and shall supply the Project Manager with details of that Result. Each Party shall notify other Results to the Project Manager in the [monthly][quarterly][annual]²⁸ reports provided under clause 3.5.
- 7.6 Subject to where otherwise provided in this Agreement, neither Party shall have the right to use the other Party's Background IP 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 except as is provided in clauses 7.2 and 7.8. The owner of the Intellectual Property in any Background IP 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.
- 7.7 A Party that assigns its rights, title or interest in any of the Intellectual Property in any Result shall ensure that:
- 7.7.1 the assignment transaction takes account of the true commercial value of the Intellectual Property being assigned; and
 - 7.7.2 the assignee or transferee agrees to enter into a direct covenant with the other Party under which it agrees to abide by the provisions of this Agreement.
- 7.8 Each Party grants the other Party a royalty free, non-exclusive licence to use and exploit its Results solely:
- 7.8.1 for the purpose of carrying out the Project;
 - 7.8.2 to conduct [its own] research and development;
 - 7.8.3 for use by the other Network Licensees within their network system; and
 - 7.8.4 for a Party and its Group Companies' internal business purposes.

²⁷ Only relevant where a University or other academic institution is involved in the collaboration, delete if no such relevant parties

²⁸ Delete as appropriate

- 7.9 In connection with the use made by Network Licensees of Results, the Network Licensees shall, in entering into contractual arrangements relating to the Results, consider the potential to provide the best long term value to all customers. Such obligations shall apply during and following the completion of the Project.
- 7.10 For the avoidance of doubt, the licences granted under clause 7.2 and 7.8 do not extend to the commercial exploitation of any Background IP, Results or applications for them and commercial exploitation shall include without limitation licensing or selling any products created using the Results.
- 7.11 Neither Party may grant any sub-licence to use the other Party's Results except:
- 7.11.1 that a Party may allow its Group Companies, and any of its or their contractors or agents working for it or any Group Company, or on its behalf or that of any Group Company, to use either Party's Results (i) for the purposes of carrying out the Project; (ii) to conduct research and development for the Party or Group Company; and (iii) for such Party's or Group Company's internal business purposes, but for no other purpose.
- 7.12 [Each Academic Party and each of its employees and students shall have the irrevocable, royalty-free right to use the Results for the purposes of academic teaching and academic research. The rights in this clause are subject to the rules on Academic Publication in clause 9 and the confidentiality obligations in clause 10.]²⁹
- 7.13 For the avoidance of doubt, no Party shall introduce or provide to the other Party any third party materials that require an obligation on a Party to license any Results or Background IP on different terms to those agreed above.
- 7.14 Between referral to an Independent Expert pursuant to clause 7.14 and the determination of the fair and reasonable terms by the Independent Expert pursuant to clause 7.14, the Parties shall grant an interim non-exclusive licence to the Exploiting Party to engage in any activities in respect of which it has requested a licence, provided always that such fair and reasonable terms, once determined, shall apply retrospectively to the Exploiting Party's activities during that interim period.

²⁹ Only relevant where a University or other academic institution is involved in the collaboration, delete if no such relevant parties

8. [SOFTWARE³⁰

8.1 Each Party mutually undertakes to sign the Escrow Agreement promptly following signature of this Agreement. The Lead Party additionally undertakes to procure that the Escrow Agent promptly signs the Escrow Agreement.

8.2 Each Party mutually undertakes to abide by the terms of the Escrow Agreement and acknowledge that for the purposes of the Escrow Agreement:

8.2.1 the Source Code Materials shall constitute the material;

8.2.2 this Agreement shall constitute the licence agreement; and

8.2.3 all software [(including Party Software and/ or Third Party Software)] forming part of the Results shall constitute the package.

8.3 For the purposes of the Escrow Agreement, the trigger events are:

8.3.1 termination of this Agreement due to either Party's material or persistent breach howsoever arising;

8.3.2 termination by the Escrow Agent of the Escrow Agreement, if such termination is occasioned by any breach or default by a Party of its obligations under the Escrow Agreement howsoever arising including failure by a Party to pay any of the Escrow Agent's fees; or

8.3.3 the insolvency of a Party who controls the Source Code Materials.

8.4 Each Party undertakes to procure that any sub-contractor (including any third party provider of software which forms part of the Results) provides it with all assistance necessary to fulfil its obligations under this clause 8 and the Escrow Agreement.

8.5 [Notwithstanding the terms of this clause 8 the terms of the Software Licence provided for at Schedule 11 shall apply at all times to the Supplier Software.]³¹

8.6 [Each Party shall ensure that it has all rights to license any Third Party Software to the Parties and their Group Companies. In the event it does not have such right it shall procure the entering into of a direct licence between the Third Party who owns the Third Party Software and the Parties. The terms of any such direct licence which the Parties enter into shall apply to the use of the relevant Third Party Software within the Project.]³²

³⁰ Clause only relevant where Software is being provided. Provisions assume NCC form of agreement will be used

³¹ To be used only where this is a software development project and additional licence terms are agreed within Schedule 11 that differ to the terms of this clause 8

³² This is only relevant where Third Party Software is used

9. [PUBLICATION]

- 9.1 [Each Party shall submit to the other Party that owns the Intellectual Property in any of the Results or that has contributed any Background IP to the Project, in writing, details of those Results, and of that Background IP that that Party intends to publish, at least [sixty (60) days]³³ before the date of the proposed submission for Academic Publication. The other Party may, by giving written notice to the Party that has submitted those details (a "**Confidentiality Notice**"): (a) require that Party to delay the proposed Academic Publication for a maximum of twelve (12) months 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 IP or any of the Results that are to be published; or (b) require the Academic Party to prevent or procure the prevention of the publication of any of its Background IP or Results that are its Confidential Information. The Confidentiality Notice must be given within [thirty (30)]³⁴ days after receipt of details of the proposed Academic 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, the other Party's Background IP that is Confidential Information may not be published.]³⁵
- 9.2 [The Party whose student or employee makes any Academic Publication shall ensure that the Academic Publication prominently and appropriately acknowledges (in accordance with good academic practice) the contribution of the other Party to the Results and/or Background IP concerned and the role of the Project and its participants in creating the Results].³⁶
- 9.3 Subject to clause 9.4, the [[Commercial] Party may also have a mutual interest in publishing some or all of the Results under this Agreement. Wherever reasonable, the publication shall be a joint publication, or a publication by one [Commercial]³⁷ Party that acknowledges (with the other Party's consent) the other Party's role in the Project. Prior to publication, the [Commercial]³⁸ Party wishing to publish must submit a draft of the publication to all of the other Parties and provide at least [sixty (60)] days for the other Party's to review the publication. The publication must not occur unless and until the other Party consents in writing (which consent shall not be withheld or delayed unreasonably). For the avoidance of doubt, a Party may, as a condition of any

³³ Please review and consider an appropriate time frame. If in doubt, please discuss with Legal

³⁴ Please review and consider an appropriate time frame. If in doubt, please discuss with Legal

³⁵ Relevant for Academic publication only

³⁶ Relevant for Academic publication only

³⁷ Amend where this agreement is bilateral

³⁸ Amend where this agreement is bilateral

consent, require that a [Commercial]³⁹ Party delays the proposed publication for a maximum of 12 months after receipt of the [Commercial]⁴⁰ Party's notice of its intention to publish if, in the reasonable opinion of the Party receiving the notice, that delay is necessary in order to seek patent or similar protection for any of its Background IP or any of the Results that are to be published; or (b) require the [Commercial]⁴¹ Party to prevent or procure the prevention of the publication of any of its Background IP or Results that are Confidential Information.

9.4 The Parties shall publish the Relevant Results as more particularly described in Schedule 9. Prior to publication of the Relevant Results the draft publication shall be submitted to the Steering Committee for approval. In the event the Steering Committee does not approve the publication within 5 Business Days of it being submitted the Lead Party shall be entitled to publish the publication immediately.

10. **CONFIDENTIALITY**

10.1 [Without prejudice to any obligations of confidentiality in the Funding Conditions, and]⁴²subject to clause 9, neither Party shall [, either during the Project Period or for [3][5][7][10] years after the end of the Project Period,]⁴³ copy, disclose to any third party nor use for any purpose, except carrying out the Project, the other Party's Confidential Information.

10.2 Neither Party shall be in breach of any obligation to keep any Background IP or other information confidential or not to copy or disclose it to the other Party or not use it for any purpose other than carrying out the Project to the extent that it:

10.2.1 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 the other Party;

10.2.2 is or becomes publicly known without any breach of this Agreement or any other undertaking to keep it confidential;

10.2.3 has been obtained by the Party making the disclosure from a third party in circumstances where the Party making the disclosure has no

³⁹ Amend where this agreement is bilateral

⁴⁰ Amend where this agreement is bilateral

⁴¹ Amend where this agreement is bilateral

⁴² To be included only where there is third party funding such as TSB, if no such funding the square brackets can be deleted

⁴³ Please review and consider an appropriate time frame. You may wish to use "Term" here instead. If in doubt, please discuss with Legal

reason to believe that there has been a breach of an obligation of confidentiality;

10.2.4 has been independently developed by the Party making the disclosure; or

10.2.5 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

10.2.6 is approved for release in writing by an authorised representative of the Party whose information it is.

10.3 Neither Party shall be in breach of any obligation to keep any Background IP that is not Confidential Information or other information, confidential or not to disclose them to any third party by:

10.3.1 publishing it if it has followed the procedure in clause 9.1 or 9.3 and has received no Confidentiality Notice within the period stated in that clause; or

10.3.2 disclosing it to the Funding Body in accordance with the Funding Conditions]⁴⁴.

10.4 Neither Party shall be in breach of any obligation to keep the other Party's Background IP, 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 7.8 provided they are not used except as expressly permitted by this Agreement and the recipient undertakes to keep that Background IP or that information confidential. Each Party shall procure that its (and its Group Companies') respective staff, students and any of its agents, consultants or sub-contractors (and their respective staff) engaged to work on the Project or to whom the other Party's Confidential Information is disclosed or made available shall comply with the terms of this clause 10 as if they were binding upon them personally.

⁴⁴ Only relevant where a University or other academic institution is involved in the collaboration, delete if no such relevant parties

- 10.5 If a 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 the other Party, it shall notify that other Party and shall consult with it promptly and before making any disclosure under that Act and shall not make any such disclosure where any exemption or exception to disclosure is available under that Act. That other Party shall respond to the 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.
- 10.6 Neither Party shall use the other Party's name or the name of any of the Key Personnel provided by the other Party, or the other 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 the other Party in that Academic Party's Annual Report and similar publications]⁴⁵.
- 10.7 The Parties acknowledge that Relevant Results shall not form part of the Confidential Information and no Party shall be in breach of the terms of this Agreement when disclosing and publishing Relevant Results.

11. **LIMITATION OF LIABILITY**

- 11.1 Unless expressly provided otherwise in this Agreement, the liability of each Party for their obligations under this Agreement shall be several and extend only to any loss or damage arising out of their own breaches.
- 11.2 Each Party warrants to the other Party 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]⁴⁶, 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 IP or materials, works or information provided in connection with the Project, shall not constitute or result in any infringement of third-party rights. Each Party shall promptly notify the Project Manager if it is or becomes aware of any:
- 11.2.1 third party Intellectual Property relevant to the performance of the Project or the exploitation of Results; or

⁴⁵Only relevant where a University or other academic institution is involved in the collaboration, delete if no such relevant parties

⁴⁶ Only relevant where a University or other academic institution is involved in the collaboration, delete if no such relevant parties

- 11.2.2 actual or likely infringement of third party Intellectual Property arising out of the performance or contemplated performance of the Project.
- 11.3 Where a Party makes available materials or information to the other Party under this Agreement and the supplying Party is aware (having made no specific enquiry) that any of the Intellectual Property in such materials or information is licensed to it then:
- 11.3.1 the supplying Party shall notify the receiving Party in writing of this fact and any restrictions on the use or disclosure of such materials or information prior to supplying such materials or information; and
- 11.3.2 the receiving Party shall comply with such terms in respect of their use of the materials or information concerned.
- 11.4 [Each Party (the "Indemnifying Party") shall be liable for, and shall indemnify and keep indemnified any other Party (the "Indemnified Party") in full and on demand from and against all and any liabilities, losses, damages, costs and expenses (including legal and out-of pocket costs and expenses), claims or actions resulting from any claim or allegation that any use or exploitation by the Indemnified Party in accordance with the terms of this Agreement of the Background IP or Results belonging to the Indemnifying Party infringes the Intellectual Property of any Third Party.]⁴⁷
- 11.5 Except under the limited warranty in clause 11.2 [and the indemnity at clause 11.4]⁴⁸ and subject to clause 11.8, neither Party accepts any liability or responsibility for any use which may be made by the other Party of any Background IP or Results, nor for any reliance which may be placed by that other Party on any such Background IP or Results, nor for advice or information given in connection with any Results and the supplying Party gives no warranty, condition or representation of any kind (whether express or implied) as to the sufficiency accuracy or fitness for purpose of such Background IP, Results, advice or information. The receiving Party shall be entirely responsible for the use to which it puts such Background IP, Results, advice and information.
- 11.6 Subject to clause 11.8, the liability of each 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 or the Results, shall 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 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.

⁴⁷ Wording only relevant where a party is bringing ready made technology to the Project, Not appropriate for true "blue sky thinking" R & D arrangements. Additionally wording will require amendment to ensure bilateral.

⁴⁸ Only include where indemnity at 11.4 included

11.7 Subject to clause 11.8, the aggregate liability of each Party to the other 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, shall not exceed in total []⁴⁹

11.8 Nothing in this Agreement limits or excludes either Party's liability for:

11.8.1 death or personal injury; or

11.8.2 any fraud or for any sort of liability that, by law, cannot be limited or excluded.

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

11.10 [A Party's liability under the indemnity at clause 11.4 shall be unlimited and not subject to clause 11.7]⁵⁰

12. **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 shall not be in breach of this Agreement because of that delay in performance. However, if the delay in performance is more than [3][6]⁵¹ months, either Party will be entitled to terminate this Agreement immediately by giving written notice to that effect to the other party.

13. **PREVENTION, CORRUPTION AND BRIBERY**

The Parties shall at all times comply with the paragraphs of Schedule 10.

14. **TERMINATION**

14.1 A Party may treat the other Party as having withdrawn from the Project with immediate effect by giving notice to that Party (to be served by such representative of the non-defaulting Party as it may determine in its sole discretion)] if:

⁴⁹ To be considered on a case by case basis, please see guidance note for examples of considerations before setting amount. Note if it likely there will be damage to property or equipment the cap may need to be split to account for this. Additionally note that each party under this agreement may be subject to a different cap, it is not necessarily the case that every party should have a shared cap value, this will be project specific

⁵⁰ Only include if the indemnity at clause 11.4 is included

⁵¹ Delete as appropriate. If in any doubt, please speak to Legal

- 14.1.1 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]⁵² days after receipt of written notice specifying the breach and requiring its remedy; or
- 14.1.2 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 dissolution, 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 shall be deemed to have withdrawn from the Project]⁵³.
- 14.2 Each Party shall 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]⁵⁴ months after the date of that notice, the Party who originally appointed that member of the Key Personnel shall nominate a successor. The other Party shall not unreasonably refuse to accept the nominated successor, but if the successor is not acceptable to the other Party on reasonable grounds, the other Party may terminate this Agreement by giving not less than [3]⁵⁵ months' notice.
- 14.3 Either Party may withdraw from the Project by giving to the other Party not less than [3]⁵⁶ months' notice if any of the Key Personnel appointed by the Party is unable or unwilling to be involved in the Project.]⁵⁷
- 14.4 [A Party that withdraws or that is treated as having withdrawn from the Project in accordance with clauses 14.1 or 14.3 may not recover from the other Party any of its costs incurred in connection with the Project to the extent that those costs were incurred after the date of its withdrawal]⁵⁸.
- 14.5 [Rights granted under clause 6.2 by a Party that withdraws or that is treated as having withdrawn from the Project in accordance with clauses 14.1 or 14.3 to the other Party in respect of the withdrawing Party's Background IP shall

⁵² Delete as appropriate. If in doubt, please speak to Legal

⁵³ May need amendment if this agreement is bilateral - consult with legal

⁵⁴ Delete as appropriate. If in doubt, please speak to Legal

⁵⁵ Delete as appropriate. If in doubt, please speak to Legal

⁵⁶ Please review and consider an appropriate time frame. If in doubt, please discuss with Legal

⁵⁸ Requires amendment if this agreement is bilateral - consult with legal

continue for the duration of the Project and shall be extended to any new Party to this Agreement.]⁵⁹

14.6 [Rights granted under clause 7.8 and 7.11 by a Party that withdraws or that is treated as having withdrawn from the Project in accordance with clause 14.1 is notified of the termination of this Agreement in accordance with clause 14.1 to [the other Party in respect of the withdrawing Party's Results shall continue [and shall be extended to any new Party to this Agreement.]]⁶⁰

14.7 [The rights and obligations of any joint owner of any Intellectual Property shall continue under clauses 6.4 and 6.7, despite the fact that one or both joint owners have withdrawn or are treated as having withdrawn from the Project in accordance with clause 14.1]⁶¹

14.8 Clauses 1, 5.5, 5.6, 5.7, 6, 7, 8, 10, 11, 12, 14.4, 14.5, 14.6, 14.7 and 14.8 shall survive the completion or termination of the Project, or the expiry of this Agreement for any reason and shall continue in force indefinitely.

14.9 No additional person may become a Party to this Agreement without the written agreement of the then existing Parties [and the Funding Body]⁶².

15. **SITE VISITS**

15.1 Where employees or agents of one Party visit the premises of the other Party for the purposes of this Agreement then:

15.1.1 the visiting Party shall procure that each of its employees and agents complies with all reasonable security, safety and other regulations which apply to or are in force at the other Party's premises and which have been notified to it in writing or which is presented to it as evidences by a signed attendance document, at arrival at the parties premises; and

15.1.2 the Party whose premises are being visited shall ensure that the visiting Party's employees and agents are kept safe and provided with a safe system of work for so long as they are on such premises.

16. **GENERAL**

16.1 **Notices:** Any notice to be given under this Agreement must be in writing, may be delivered to the other Party by any of the methods set out in the left hand

⁵⁹ Requires amendment if this agreement is bilateral - consult with legal

⁶⁰ Requires amendment if this agreement is bilateral - consult with legal

⁶¹ Requires amendment if this agreement is bilateral - consult with legal

⁶² To be included only where there is third party funding such as TSB, if no such funding the square brackets can be deleted

column below and shall be deemed to be received on the corresponding day set out in the right hand column.

Method of service

By hand or courier
By pre-paid first class post

By recorded delivery post
By fax (provided the sender's fax machine confirms complete and error-free transmission of that notice to the correct fax number)

Deemed day of receipt

the day of delivery
the second Business Day after posting
the next Business Day after posting
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 [University or Commercial Entity]:

Name:
Address:

Fax number:

For [University or Commercial Entity]:

Name:
Address:

Fax number:

For [University or Commercial Entity]:

Name:
Address:

Fax number:

[For [University or Commercial Entity]:

Name:
Address:

Fax number:]

16.2 **Headings:** The headings in this Agreement are for ease of reference only and they do not affect its construction or interpretation.

16.3 **Assignment etc:** 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. However, the Parties may carry out their obligations and exercise their rights through members of their respective Group Companies without the consent of the other Party **[or the Funding Body]**⁶³ and this Agreement shall be construed accordingly. Where they do so then the Party concerned shall procure that each of the members of its relevant Group Company comply with these terms as if they were Parties to it.

16.4 **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

⁶³ To be included only where there is third party funding such as TSB, if no such funding the square brackets can be deleted

provision, shall continue in force in that jurisdiction, and the validity and enforceability of that provision in any other jurisdiction shall not be affected.

- 16.5 **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 shall 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 shall not, unless expressly stated to the contrary, constitute a waiver of that provision on a future occasion.
- 16.6 **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. Neither Party has any authority to make any representation or commitment, or incur any liability, on behalf of any other.
- 16.7 **Entire agreement:** This Agreement [and the Funding Conditions]⁶⁴ 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]⁶⁵. 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]⁶⁶. However, this clause does not exclude any liability which any 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.
- 16.8 **Formalities:** Each Party shall take any action and execute any document reasonably requested 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 of doing so.
- 16.9 **Amendments:** No variation or amendment of this Agreement shall be effective unless it is made in writing and signed by each Party's representative.
- 16.10 **Third parties:** The Parties do not intend that any term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the Parties.
- 16.11 **Governing law:** This Agreement is governed by, and is to be construed in accordance with, English law. The English Courts shall have exclusive

⁶⁴ To be included only where there is third party funding such as TSB, if no such funding the square brackets can be deleted

⁶⁵ To be included only where there is third party funding such as TSB, if no such funding the square brackets can be deleted

⁶⁶ To be included only where there is third party funding such as TSB, if no such funding the square brackets can be deleted

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.

16.12 **Escalation:**

16.12.1 The Parties shall use good faith efforts to resolve any dispute, claim or proceeding arising out of or relating to this Agreement via the Steering Committee. In the event that any disputes cannot be resolved at this level then the senior executives of the Parties who have authority to settle the same shall use good faith efforts to resolve the same. If the matter is not resolved through negotiation, it shall be settled as agreed by the Steering Committee either by:

16.12.1.1 Mediation in accordance with the Centre for Dispute Resolution ("**CEDR**") Model Mediation Procedure (the "**Model Procedure**"). To initiate a mediation a Party must give notice in writing to the other Party to the dispute requesting a mediation pursuant to the Model Procedure. A copy of the request shall also be sent to CEDR. The mediation shall be before a single, independent mediator appointed by agreement of the Parties or, in the absence of agreement, by the President for the time being of the Law Society of England and Wales; or

16.12.1.2 If mediation of the dispute does not result in its resolution, by reference to the jurisdiction of the Courts in England. In this event, each Party shall have the right to take proceedings in any other jurisdiction for the purposes of enforcing a judgement or order obtained from the Courts in England.

16.12.2 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 shall refer the matter to **[[insert officer]** in the case of **[insert name of University or commercial entity]**, to **[insert officer]** in the case of **[insert name of University or commercial entity]**, to **[insert officer]** in the case of **[insert name of University or commercial entity]**, and to **[insert officer]** in the case of **[insert name of National Grid entity]** in an attempt to resolve the issue within 14 days after the referral. Either Party may bring proceedings in accordance with clause 16.11 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.

SAMPLE

IN WITNESS of which the Parties have signed this Agreement on the date set out above.

SIGNED by **[SIGNATORY]** for and on behalf of **[RELEVANT NG ENTITY]** in the presence of:

Witness

Signature :
Name :
Occupation :
Address :

SIGNED by **[SIGNATORY]** for and on behalf of **[INSERT NAME OF COMPANY]** in the presence of:

Witness

Signature :
Name :
Occupation :
Address :

SAMPLE

SCHEDULE 1
THE FINANCIAL CONTRIBUTIONS

SAMPLE

SCHEDULE 2
THE PROJECT PLAN

SAMPLE

SCHEDULE 3

[THE FUNDING CONDITIONS]⁶⁷

SAMPLE

⁶⁷ To be included only where there is third party funding such as TSB, if no such funding this sub clause can be deleted

SCHEDULE 4

TERMS OF REFERENCE OF THE STEERING COMMITTEE

SAMPLE

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 Industry Practice;
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]⁶⁸ written notice, to visit the other Party and inspect its systems to verify that it is complying with the above practices and procedures.

⁶⁸ Please review and consider an appropriate time frame. If in doubt, please discuss with Legal

SCHEDULE 6

[THE PAYMENT PLAN]

SAMPLE

SCHEDULE 7

ANTI-CORRUPTION AND ANTI-BRIBERY POLICIES

SAMPLE

SAMPLE

SCHEDULE 8

BACKGROUND CHECKS

- Additional Check:** the Basic Check plus a check on Other Personnel's employment history for a period of three (3) years prior to the date such Other Personnel are engaged in the Project;
- Basic Check:** a verification check on any Other Personnel identity and a confirmation of their right to work in the country relevant to the Party such employees are employed by;
- Higher Check:** the Additional Check plus a check on the Other Personnel's address for the period of five years prior to their engagement and a basic disclosure of their criminal record for unspent criminal convictions;

1. BACKGROUND CHECKS

- 1.1 The Other Personnel shall (and shall procure that its subcontractors' of any tier and its agents' and sub-licensees' shall) comply with the background check requirements as set out below and as amended from time to time.
- 1.1.1 Any of Other Personnel shall undergo the Basic Check prior to commencing work on the Project.
- 1.1.2 Any Other Personnel who shall be allowed unsupervised access to National Grid's (or any other of National Grid's Group Companies') operational or office site shall undergo the Additional Check.
- 1.1.3 Any Other Personnel who shall be given any level of unsupervised access to or control (whether local or remote) over National Grid's (or any other of National Grid's Group Companies') financial information, commercial information, information systems, security systems or personal employee information, and any Other Personnel who shall have access directly to members of the public, domestic properties, customers or customer records shall undergo the Higher Check.
- 1.2 Where a Higher Check is required and it reveals that any individual within the Other Personnel has a criminal record, such record shall be disclosed to National Grid if the Other Personnel is intending to engage such individual in the Project. National Grid reserves the right in its absolute discretion to reject via the Steering Committee any such individual if in their opinion the conviction renders them unsuitable for the work in question.

- 1.3 National Grid reserves the right to require that additional checking over and above the Higher Check be undertaken for particularly high risk roles or if any issues are raised in undertaking other checks on Other Personnel.
- 1.4 Where National Grid becomes aware of any conviction of any individual within Other Personnel, or any falsification of information by such individuals, this information shall be forwarded to the Steering Committee for determination in its absolute discretion as to whether the individual should be allowed to continue to be engaged in the Project.
- 1.5 Other Personnel shall retain accurate and complete records of all checks undertaken in accordance with the Data Protection Act 1998 for the UK and any equivalent legislation or regulation as applicable to the country of origin of the Other Personnel. These records shall be held in such a manner that they can be readily audited. All such records shall be held until 12 months after termination of this Agreement. The Other Personnel agrees to permit National Grid or its representatives to examine or audit these records upon receipt of reasonable notice from National Grid (which shall be no less than 48 hours). National Grid may also perform audits of the Other Personnel's background check program. The Parties shall bear their own costs unless such audit reveals a material breach of this Agreement when they shall be borne by the Other Personnel.

SCHEDULE 9

MODEL FORM OF RELEVANT RESULTS DISCLOSURE

1. Subject to the Network Licensee making all applicable information available, the Relevant Results will be the element of the Results to be disclosed or published as required, and in the format provided for, at Chapter 6 of the relevant Governance Document.
2. Reference to the above Chapter of the relevant Governance Document shall, unless the context otherwise requires, include and be construed as references to such Chapter as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.

SAMPLE

SCHEDULE 10

PREVENTION, CORRUPTION AND BRIBERY

Prohibited Act means:

(a) offering, giving or agreeing to give to the other Party, any of the Party's Group Companies, or any persons associated with the Party or their Group Companies including the Party's or their officers, employees or agents, any gift or consideration of any kind as an inducement or reward: (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other between the Parties; or (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract between the Parties;

(b) entering into this Agreement or any other contract with a Party to this Agreement, any of the Party's Group Companies, or any persons associated with the Party or their Group Companies where a commission has been paid or has been agreed to be paid by the other Party or on its behalf, or to its knowledge, unless, before the relevant contract is entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Party;

(c) committing any offence: (i) under the Bribery Act 2010 (or engaging in any activity, practice or conduct which would constitute an offence under any one or more of these acts if such activity, practice or conduct had been carried out in the UK); (ii) under legislation creating offences in respect of fraudulent acts, or (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract between the Parties;

(d) in the event a Party resides outside the UK committing any offence equivalent to those under (c)(i) to (c)(iii) above under their local legislation and regulations;

(d) engaging in any activity, practice or conduct which does not comply with the anti-corruption and anti-bribery policies provided at Schedule 7 and the Parties shall agree through the Steering Committee any amendments to these policies;

(e) doing, or omitting to do, any act that shall cause or lead the other Party or any of its Group Companies to be in breach of the Bribery Act 2010 or in the event a Party resides outside the UK any equivalent legislation and/or the policies referred to in (d) above; or

- (f) defrauding, attempting to defraud or conspiring to defraud the other Party or any of its Group Companies;
- 2.1 Each Party represents and undertakes to National Grid that it, its sub-contractor, its and their Group Companies, employees, officers, agents and shareholders, and the Parties Personnel, have not committed and shall not commit any Prohibited Act.
- 2.2 If either Party (excluding National Grid), any sub-contractor of such Party, any of its or their Group Companies, employees, officers, agents or shareholders, or any Parties Personnel, commit any Prohibited Act, then National Grid shall be entitled to act in accordance with this Schedule 10.
- 2.3 If a Prohibited Act is committed by a Party, excluding National Grid (the "Offending Party"), any of its Group Companies, or any of its or their employees, officers, agents or shareholders not acting independently of the Offending Party and its Group Companies, then National Grid, acting via the Steering Committee shall be entitled to terminate this Agreement by giving written notice to the Offending Party, specifying the date on which the Agreement shall terminate.
- 2.4 If a Prohibited Act is committed by an employee or agent of the Offending Party or of any of its Group Companies, acting independently of the Offending Party and its Group Companies, then National Grid acting via the Steering Committee may give written notice to the Offending Party of termination of this Agreement, and this Agreement will terminate [10]⁶⁹ Working Days after the date of such notice, unless, within such [10]⁷⁰ Working Day period, the Offending Party terminates (or procures the termination of) such employee's employment or agent's engagement and (where applicable) ensures that the performance of such employee's or agent's obligations in relation to this Agreement are performed by another person.
- 2.5 If a Prohibited Act is committed by a sub-contractor or by an employee or agent of that sub-contractor not acting independently of that sub-contractor, then National Grid acting via the Steering Committee may give written notice to the Offending Party of termination of this Agreement, and this Agreement will terminate [10]⁷¹ Working Days after the date of such notice, unless, within such [10]⁷² Working Day period, the Offending Party terminates the relevant sub-contract and ensures that the performance of the sub-contractor's obligations in relation to this Agreement are performed by another person.

⁶⁹ Please review and consider an appropriate time frame. If in doubt, please discuss with Legal

⁷⁰ Please review and consider an appropriate time frame. If in doubt, please discuss with Legal

⁷¹ Please review and consider an appropriate time frame. If in doubt, please discuss with Legal

⁷² Please review and consider an appropriate time frame. If in doubt, please discuss with Legal

- 2.6 If the Prohibited Act is committed by an employee or agent of a sub-contractor acting independently of that sub-contractor, then National Grid acting via the Steering Committee may give written notice to the Offending Party of termination of this Agreement, and this Agreement will terminate [10]⁷³ Working Days after the date of such notice, unless within such [10]⁷⁴ Working Day period, the sub-contractor terminates the employee's employment or agent's engagement and ensures that the performance of that employee's or agent's obligations in relation to this Agreement are carried out by another person.
- 2.7 If the Prohibited Act is committed by any person not specified in paragraphs 2.2 to 2.6 (inclusive) above (or by any person specified in such clauses but acting in a capacity not specified in such clauses) then National Grid acting via the Steering Committee may give written notice to the Offending Party of termination of this Agreement, and this Agreement will terminate [10]⁷⁵ Working Days after the date of such notice, unless, within such [10]⁷⁶ Working Day period, the Offending Party (a) procures the termination of such person's employment or engagement, and the appointment of their employer or the person who engaged them (where not employed or engaged by the Offending Party or any relevant sub-contractor) and (b) ensures that the performance of that person's obligations in relation to this Agreement are performed by another person.
- 2.8 National Grid shall specify, in any notice of termination under this Schedule 10:
- 2.8.1 the general nature of the relevant Prohibited Act; and
 - 2.8.2 the identity of the Party or person whom it believes has committed such Prohibited Act.
- 2.9 Without prejudice to each National Grid's other rights and remedies, the Offending Party shall indemnify National Grid in full and on demand against all losses, liabilities, costs, claims and expenses incurred directly or indirectly by National Grid as a result of the performance of any Prohibited Act by the Offending Party, any sub-contractor, any of its or their Group Companies, employees, officers, agents or shareholders, or any Parties Personnel in connection with this Agreement, its subject matter or any agreements (including any sub-contracts of whatever tier) relating to it.
- 2.10 Without prejudice to the other provisions of this Schedule 11, each Party shall ensure that:

⁷³ Please review and consider an appropriate time frame. If in doubt, please discuss with Legal

⁷⁴ Please review and consider an appropriate time frame. If in doubt, please discuss with Legal

⁷⁵ Please review and consider an appropriate time frame. If in doubt, please discuss with Legal

⁷⁶ Please review and consider an appropriate time frame. If in doubt, please discuss with Legal

- 2.10.1 all Parties Personnel are fully aware of the policies on anti-corruption and anti-bribery provided at Schedule 7 and any amendments from time to time and that all sub-contractors and agents (of whatever tier) are engaged upon terms which contain provisions in relation to prevention of bribery and corruption which are no less onerous than this Schedule 10; and
- 2.10.2 it has and shall maintain in place throughout the currency of this Agreement, its own policies and procedures, (including adequate procedures under the Bribery Act 2010 or such equivalent for any other relevant jurisdiction), to ensure compliance with the policies provided in Schedule 7, and shall enforce them where appropriate.
- 2.11 The termination of this Agreement pursuant to this Schedule 10 shall entitle National Grid and each of its Group Companies to terminate any other contracts between the Offending Party and National Grid, or the Offending Party and such Group Company (as appropriate) on written notice to the Offending Party.
- 2.12 Notwithstanding clause 16.12, any dispute relating to:
- 2.12.1 the interpretation of this Schedule 10; or
- 2.12.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Steering Committee and its decision shall be final and conclusive.

SCHEDULE 11
SOFTWARE LICENCE

SAMPLE