

PROJECT AGREEMENT

between

[insert names of Academic Collaborators]

and

[insert names of Industrial Collaborators]



INDEX

1.	Definitions and Interpretation	1
2.	Commencement and Duration	4
3.	Conduct of the Project	4
4.	Project Management	5
5.	Funding and Payment Obligations	6
6.	Reporting	7
7.	Intellectual Property Rights	7
8.	Publications	10
9.	Confidentiality	11
10.	Liability	12
11.	Termination	14
12.	Force Majeure	16
13.	Notices	16
14.	General	17
15.	Dispute Resolution	18
16.	Governing Law and Jurisdiction	19
	Part 1 Project Plan	21
	Part 2 Payment Schedule	22

AGREEMENT

BETWEEN:

(1) [INSERT DETAILS OF ACADEMIC COLLABORATOR (1)]; and[

(2) [INSERT DETAILS OF ACADEMIC COLLABORATOR (2)],]

[the **Academic Collaborator** / each an **Academic Collaborator** and, collectively, the **Academic Collaborators**],

and

(3) [INSERT DETAILS OF INDUSTRIAL COLLABORATOR (1)]; and

(4) [INSERT DETAILS OF INDUSTRIAL COLLABORATOR (2)],]

[the **Industrial collaborator** /each an **Industrial Collaborator** and, collectively, the **Industrial Collaborators**],

the Academic Collaborators and the Industrial Collaborators being collectively referred to as the **Parties**.

WHEREAS:

- A. [The Academic Collaborator /Each of the Academic Collaborators] submitted a project proposal to The University Court of the University of Glasgow (in its capacity as the recipient and administrator of certain funding which has been made available by the Scottish Funding Council (**SFC**) for the Sensor and Imaging Systems Innovation Centre (the **CENSIS Innovation Centre**)) (**CENSIS**);
- B. On the basis of the project proposal, CENSIS has recommended that [the /each of the] Academic Collaborators be awarded funding to undertake the collaborative research project entitled [insert project name] (the **Project**);
- C. [The Industrial Collaborator /Each of the Industrial Collaborators] has agreed to collaborate with the Academic Collaborators on the Project and to provide the financial and other in-kind contributions for the Project set out in the Project Plan; and
- D. The Parties have agreed to enter into this Agreement to (i) govern their respective contributions and responsibilities in respect of the Project and (ii) set out their respective rights in relation to the results generated during the Project.

NOW IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (including the Recitals), unless the context otherwise requires:

Agreement means this agreement together with the Schedule in [two (2)] parts annexed hereto;

Background IP means, in respect of each Party, any Intellectual Property which at the Commencement Date is in, or during the Project (other than as a result of the Project) comes into, the ownership or control of that Party and which that Party (a) makes available for the

purpose of conducting the Project; and (b) is free to use and licence in accordance with the provisions of this Agreement;

CENSIS Governing Board means the governing board of the CENSIS Innovation Centre, as established by CENSIS;

CENSIS Management Board means the management board of the CENSIS Innovation Centre, as established by CENSIS;

CENSIS Partner has the meaning given to it in Clause 7.4;

CENSIS Project Manager means [insert name] or such alternate as may be nominated by the CENSIS Management Board from time to time;

Condition Precedent means receipt and acceptance of the Offer Letter by the Academic Collaborator(s);

Confidential Information means in relation to each Party:

- a) Background IP and Project Results of any other Party that are disclosed to it in connection with the Project; and
- b) any information of a confidential nature relating to any other Party to this Agreement, including Intellectual Property disclosed to it by or on behalf of any other Party in connection with this Agreement or at meetings of the JSC, whether before or during the period of this Agreement, including any information relating to any other Party's business or scientific strategies, opportunities, finances or processes, or research or product development;

Contributions means the financial contributions and the in-kind contributions which the Industrial Collaborators have committed to the Project, as set out in sections [x] and [y] of the Project Plan respectively;

Effective Date means the last date of signature of this Agreement;

JSC has the meaning given to it in Clause 4.1;

Intellectual Property means:

- a) copyrights, rights in and to inventions (patentable and unpatentable), know-how, results and technical information, patents, database rights, trade marks and trade names, rights in goodwill and to sue for passing off, designs and design rights (registered and unregistered), utility models, supplementary protection certificates and other extensions of patent term and all rights of a similar nature in any part of the world, and applications and the right to apply for registration of any intellectual property rights; and

b) any written records documenting the items referred to in (a) above;

Lead Collaborator means [insert name of Party leading/ co-ordinating Project];

Longstop Date means the date falling exactly three (3) months after the date CENSIS first notifies the Academic Collaborator that the Project has been recommended for funding;

Milestones means the milestones for the Project set out in section [x] of the Project Plan;

Offer Letter means, in respect of each Academic Collaborator, the letter received by it from CENSIS setting out the funding which that Academic Collaborator will receive from CENSIS in respect of the Project;

Payment Schedule means the payment schedule for the financial contributions to be made by the Industrial Collaborators set out in Part 2 of the Schedule;

Project Completion means either (a) when all the Parties have completed their Responsibilities and all Contributions have been made; or (b) when one or more of the events at Clause 11 arise, leading the Parties to cease work on the Project;

Project Funding means the total funding allocated to the Academic Collaborator[s] for conduct of the Project by CENSIS pursuant to the Offer Letters;

Project Results means all Intellectual Property generated in the course of or otherwise collected or collated, arising, identified or first reduced to practice in the course of the Project;

Project Plan means the plan for the Project set out in Part 1 of the Schedule (as amended from time to time pursuant to Clause 3.5);

Responsibilities means, in respect of each Party, the duties and responsibilities assigned to it in the Project Plan and such other duties and responsibilities relating to the Project as may be assigned to it by the agreement of each of the Parties, whether before or during the Project; and.

Term means the period commencing on the Effective Date and expiring on Project Completion.

- 1.2 Words denoting the singular include the plural and vice versa, words denoting a gender include all genders, and words denoting persons include corporations, partnerships and all other legal entities.
- 1.3 Unless the context otherwise requires, references in this Agreement to any Clause will be deemed to be a reference to the relevant clause of this Agreement.
- 1.4 The headings are inserted for ease of reference only and shall not affect the interpretation or construction of this Agreement.

- 1.5 References in this Agreement to the words include or including are to be construed without limitation to the generality of the preceding words.
- 1.6 A reference to a particular law or statutory provision is a reference to it as it is in force for the time being taking account of any amendment, modification, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 Any reference to any Scottish term for any action, remedy, method or judicial proceeding, legal document, legal status, court, official or any legal concept or thing will in respect of any jurisdiction other than Scotland be deemed to include what most nearly approximates in that jurisdiction to the Scottish term.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement shall come into force as of the Effective Date but save for Clauses 9-16 (inclusive), its provisions shall have no effect until the Condition Precedent is satisfied. If the Condition Precedent is not satisfied prior to the Longstop Date, this Agreement shall automatically terminate on the Longstop Date. If the Longstop Date is satisfied, its provisions shall remain in full force and effect for the Term .

3. CONDUCT OF THE PROJECT

[Suggested **Negotiation parameter:**]

- 3.1 The Project shall be undertaken under the direction of the Lead Collaborator. If at any time during the period of this Agreement the Lead Collaborator is unable or unwilling to continue with the Project the other Parties and the CENSIS Project Manager shall endeavour to appoint a successor as soon as reasonably practicable thereafter. If the other Parties and the CENSIS Project Manager are either unable to agree or unable to appoint a suitably qualified successor within [three (3) – six (6)] months following the date on which the Lead Collaborator becomes unable or unwilling to continue with the Project, this Agreement may be terminated as provided in Clause 11.2.
- 3.2 Each Party will make available to each of the other Parties (as required) all necessary personnel, resources, facilities and equipment required to properly conduct the Project in accordance with the Project Plan and each Industrial Collaborator will make available to each of the other Parties the relevant Contributions in accordance with the Project Plan.
- 3.3 Each Party will carry out its Responsibilities:
- 3.3.1 in a timely manner and in accordance with all relevant timescales set out in the Project Plan;
- 3.3.2 in accordance with the terms of this Agreement;

- 3.3.3 in accordance with the terms of the Offer Letters and the terms of any other provider of public sector grant funding for the Project (to the extent that such terms apply to it); and
- 3.3.4 diligently, with reasonable skill and care and in accordance with all relevant legislation, rules, regulations and codes of practice relating to conduct of the Project.
- 3.4 Each Party will promptly notify the other Parties and the JSC of any delay or anticipated delay in its performance of the Project or its failure to meet any of the Milestones
- 3.5 The Parties will not amend or alter the Project Plan without first consulting with the JSC and thereafter obtaining the prior written consent of each of the Parties and CENSIS.

4. PROJECT MANAGEMENT

[Suggested **Negotiation parameter: include or remove Clause 4.2 at its discretion depending on the complexity of the Project and the number of Parties participating in the Project.**]

- 4.1 The Project will be managed by the Lead Collaborator who will form a joint steering committee (the **JSC**) which will be comprised of a representative of the Lead Collaborator, the CENSIS Project Manager and one (1) appropriately qualified representative of each other Party. The JSC, under the leadership of the Lead Collaborator's representative, will be responsible for the overall management of the Project.
- 4.2 [The JSC will operate as follows:
- 4.2.1 meetings of the JSC will be arranged by the Lead Collaborator's representative and will take place in person or by telephone or video conferencing on dates and at locations (if applicable) [agreed between the members of the JSC] [arranged by the Lead Collaborator's representative];
- 4.2.2 [fifty percent (50%)] of the members of the JSC (including the Lead Collaborator's representative and the CENSIS Project Manager) must be in attendance at a meeting in order that such meeting is quorate [and decisions will be made by simple majority of the members in attendance at the relevant (quorate) meeting];
- 4.2.3 each member of the JSC shall be entitled to send an alternate to meetings of the JSC provided always that such alternate is also appropriately qualified;
- 4.2.4 the JSC will meet no less than once every [three (3)] months or at such other frequency as [the members of the JSC may agree] [decided by the Lead Collaborator's representative];
- 4.2.5 each Party will keep the other Parties (via its representative on the JSC) regularly informed regarding its progress with the Project; and

4.2.6 the JSC will have responsibility for monitoring the progress of the Project against the Project Plan throughout the duration of the Project.

4.3]The Parties acknowledge and agree that the purpose of the JSC is to function as a forum for consultation, to support the co-ordination of the Project and to oversee the conduct and management of the Project. Decisions of the JSC will not be legally binding upon the Parties and the members of the JSC shall not be entitled to give any consents or approvals required of the Parties under this Agreement.

5. FUNDING AND PAYMENT OBLIGATIONS

[Suggested **Negotiation parameter: amend the timescales and percentages set out in this Clause within the limits noted below. In addition the choice of bank may be amended]**

5.1 In consideration of the Academic Collaborators carrying out their Responsibilities, each Industrial Collaborator will pay the financial contributions specified in section [x] of the Project Plan to the relevant Academic Collaborator(s) in accordance with the Payment Schedule.

5.2 Each Academic Collaborator will provide the relevant Industrial Collaborator with an appropriate invoice prior to each payment date set out in the Payment Schedule and each Industrial Collaborator will pay each invoice received pursuant to this Clause 5.2 in pounds sterling (£) within [thirty (30) – forty five (45)] days following the date of such invoice.

5.3 If an Industrial Collaborator fails to make a payment pursuant to Clause 5.2 within [thirty (30) – forty five (45)] days following the date of the relevant invoice, interest at the rate of [two percent (2%) – four percent (4%)] per annum above the base rate from time to time of the [Clydesdale Bank PLC / insert appropriate bank] shall be due and payable by that Industrial Collaborator on such payment from the relevant payment date set out in the Payment Schedule until settlement in full.

5.4 The financial contributions specified in section [x] of the Project Plan are deemed to be exclusive of any VAT which may be due thereon. If a financial contribution specified in section [x] of the Project Plan is or becomes subject to VAT, the relevant Industrial Collaborator shall pay such VAT at the then prevailing rate to the relevant Academic Collaborator(s) without any set-off, withholding or deduction.

5.5 [The /Each] Academic Collaborator will keep full and accurate records relating to its use of the Project Funding, the financial contributions received from the Industrial Collaborators and its expenditure in respect of the Project and shall provide CENSIS with accurate statements of project spend on a quarterly basis.

5.6 [The /Each] Industrial Collaborator will keep full and accurate records relating to the in-kind contributions that it provides in respect of the Project and shall provide CENSIS with statements in relation thereto on a quarterly basis.

6. REPORTING

[Suggested **Negotiation parameter: amend the timescales set out in this Clause within the limits noted below.**]

- 6.1 Each Party will keep, and will ensure that each of its employees, students and permitted sub-contractors keeps, detailed written records and reports in respect of its progress with its Responsibilities and its generation of any Project Results, in accordance with good academic practice. Each Party will provide copies of such records and reports to the other Parties, the JSC and CENSIS promptly on request.
- 6.2 Each Industrial Collaborator will, for the duration of this Agreement and [for a period of [six (6)] years] following the date of expiry or termination of this Agreement, provide reasonable assistance and information to the Academic Collaborators to assist them with the preparation of any reports which they are required to provide to CENSIS pursuant to the terms of the Offer Letters. [Suggested **Drafting note: the wording in square brackets may be deleted at the Parties discretion.**]
- 6.3 Each Academic Collaborator will provide to each of the other Parties, on request, copies of any reports which it has provided to the CENSIS Project Manager or CENSIS (as applicable) pursuant to the terms of its Offer Letter.

7. INTELLECTUAL PROPERTY RIGHTS

[Drafting note: the IP provisions below involve the granting of a number of different licences to the Parties' Background IP. On a case by case basis, it may need to be considered whether each Party is capable of and free to grant such licences. This may be an issue for Academic Collaborators where Background IP takes the form of results generated during another research project and may be an issue for Industrial Collaborators where Background IP is already subject to commercial restrictions.]

- 7.1 All Background IP shall remain the sole and exclusive property of the Party to whom it belonged prior to the commencement of the Project. No Party shall be deemed to have any right or licence to use or access any other Party's Background IP, except as expressly set out in this Agreement.
- 7.2 Each Party will own all Project Results generated by it. Any Project Results generated jointly by one or more of the Parties will be owned jointly by those Parties. Each Party will ensure that all rights of its employees, students and permitted sub-contractors in and to Project Results generated will be owned by it or have been validly assigned to it by the relevant employee, student or sub-contractor, prior to that employee, student or sub-contractor commencing work on the Project.

- 7.3 Each Party hereby grants to [the other Party/ each of the other Parties] a non-exclusive royalty-free right and licence to use and access its Background IP and Project Results, including any Project Results which it jointly owns with [the other Party /one or more of the other Parties], for the sole purpose of conducting the Project.
- 7.4 The Industrial Collaborator[s] acknowledge and agree that the Academic Collaborator[s] are expected, pursuant to the terms of the Offer Letter[s], to provide access to and use of their Project Results to each of the higher education institutions which are (from time to time) parties to the collaboration agreement for the CENSIS Innovation Centre which has been put in place by CENSIS (each such higher education institution being referred to as a **CENSIS Partner**) for future internal and/ or collaborative non-commercially funded academic research. Accordingly, each Academic Collaborator agrees that it will, where requested by CENSIS following Project Completion and where the terms of any licence entered into under the provisions of Clause 7.5 permit, grant to one or more of the CENSIS Partners (in each case, as directed by CENSIS):
- 7.4.1 an irrevocable, non-exclusive, royalty-free right and licence to access and use, and to facilitate and allow (via the granting of sub-licences to each of the other CENSIS Partners) access and use of, that Party's Project Results (including Project Results which that Party jointly owns with one or more of the other Parties (subject to consent of such joint owners)) for use in future internal and/ or collaborative non-commercially academic funded research; and
- 7.4.2 subject to any third party rights, an irrevocable, non-exclusive licence to access and use, and to facilitate and allow (via the granting of sub-licences to each of the other CENSIS Partners) access and use of such of that Party's Background IP as may be necessary to enable the use of that Party's Project Results (including Project Results which that Party jointly owns with one or more of the other Parties) for the purpose set out in Clause 7.4.1 (on fair and reasonable terms to be agreed between the relevant Party or Parties and the CENSIS Partner to which the licence is granted).
- 7.5 Since the Project is designed to address business-led challenges affecting the Industrial Collaborator(s), the Academic Collaborator(s) might expect the Industrial Collaborators will wish to exploit the Project Results and hereby provide the Industrial Collaborator with a first opportunity to acquire a commercial licence. Accordingly, where requested within [six (6)] months following Project Completion, each Academic Collaborator shall be required, except where the events at Clause 11.1 and 11.2 arise, to grant to each of the Industrial Collaborators (on reasonable terms to be agreed between the relevant Party and the relevant Industrial Collaborator and which may include provision for relevant revenue sharing of

royalties arising from any commercialised Project Results and which licence may be limited by field of use and / or territory:

- 7.5.1 a right and licence to commercially exploit that Party's Project Results, including any Project Results which that Party jointly owns with one or more of the other Parties (subject to consent of such joint owners) (which licence shall, unless otherwise agreed, be co-exclusive with the rights held by any other Industrial Collaborator which also obtains such a licence pursuant to this Clause 7.5), subject in each case to the owning Party's rights under this Agreement to publish the Project Results in academic publications and the owning Party's rights to use such Project Results for future internal and/ or collaborative non-commercially funded academic research ; and
- 7.5.2 a non-exclusive right and licence to use such of that Party's Background IP as may be necessary to enable the commercial exploitation of that Party's Project Results (including any Project Results which that Party jointly owns with one or more other Parties) for the purpose of the right and licence set out in Clause 7.5.1.
- 7.6 If, after [six(6)] months following Project Completion, in respect of any Project Results:
- 7.6.1 no request by [the /an] Industrial Collaborator has been made pursuant to Clause 7.5; or
- 7.6.2 [the /one or more] Industrial Collaborator[s] has made a request pursuant to Clause 7.5 but [licence terms have not been agreed] [no licence agreement has been executed] despite good faith negotiations between the relevant Parties,
- the [Party /Parties] owning such Project Results shall be entitled to grant licences to third parties to commercially exploit such Project Results on such terms as the relevant [Party /Parties] deem appropriate subject to obtaining the consent of the relevant joint owner[s] to the granting of any licences for Project Results owned jointly with [the other Party /one or more of the other Parties].
- 7.7 The Industrial Collaborator[s] acknowledge that the Academic Collaborator[s] are, pursuant to the terms of the Offer Letters, obliged to use their reasonable efforts, where appropriate, to commercialise the Project Results. If, in respect of any Project Results, [twelve (12)] months have passed following Project Completion and no licence to commercially exploit such Project Results has been granted, the Parties owning such Project Results will meet with CENSIS to discuss the future use and exploitation of such Project Results. The Parties acknowledge and agree that, in such cases, the most appropriate method of ensuring future use of such Project Results may be to make them available via "Easy Access licensing" or for non-exclusive commercial use at reasonable rates and each Party hereby undertakes to take reasonable account of all representations made by CENSIS in respect of the most appropriate method of

ensuring future use of such Project Results so long as such representations are consistent with the then objectives of the CENSIS Innovation Centre.

- 7.8 The Party or Parties owning Project Results shall have discretion to determine whether such Project Results should be protected by patent or by any other form of intellectual property protection. The costs of obtaining and maintaining patent or other protection for the Project Results shall be paid by the Party or Parties owning such Project Results. Each Party shall inform the [CENSIS Project Manager] [JSC] of all patents or other forms of protection which are applied for and/ or obtained in respect of Project Results.
- 7.9 Where Project Results are jointly owned and one of the Parties jointly owning such Project Results does not wish to seek protection of such Project Results pursuant to Clause 7.8, the other Party or Parties wishing to seek protection may (at their option) elect to bear the full cost of obtaining such protection, and if they so elect, the Party which does not wish to seek protection in respect of such Project Results shall licence or assign its share in such Project Results to the other Party or Parties wishing to seek protection on reasonable terms and conditions to be agreed between the relevant Parties.
- 7.10 No Party shall be entitled to commercially exploit any Project Results which it jointly owns with one or more other Parties unless and until that Party has obtained the written consent of each other Party who jointly owns the relevant Project Results.

8. PUBLICATIONS

[Suggested **Negotiation parameter: amend the timescales set out in this Clause within the limits noted below.**]

- 8.1 [The /Each] Industrial Collaborator acknowledges that the Academic Collaborators are required, under the terms of the Offer Letters and in accordance with standard academic practice, to use their reasonable efforts to publish and disseminate the Project Results.
- 8.2 Where a Party wishes to make a publication, it will:
- 8.2.1 provide a copy of the draft publication to each other Party [involved in the generation of Project Results] incorporated in that publication no less than [thirty (30) - sixty (60)] days prior to the intended date of submission of the publication;
- 8.2.2 take due account of all and any comments received from [the other [Party/Parties]] in relation to the draft publication within the [thirty (30) - sixty (60)] day notice period; and
- 8.2.3 on request, either delete or remove any Confidential Information belonging to [the other /another] Party from the draft publication or delay the intended publication for up to a period of [three (3) months – six (6) months] if necessary to enable [the other Party /one or more of the other Parties] to prepare and file a patent application

pursuant to Clause 7.8 for any patentable inventions comprised within the Project Results which would be prejudiced by the relevant publication.

- 8.3 Each Party acknowledges and agrees that no press release concerning the Project shall be made unless and until the relevant press release has been approved by each of the other Parties and the CENSIS Project Manager.
- 8.4 All publicity materials in respect of the Project (including any publications published pursuant to Clause 8.2) shall acknowledge, where appropriate, the contributions made by each of the Parties and the support given to the Project by the CENSIS Innovation Centre and SFC in the form prescribed from time to time by the CENSIS Governing Board.

9. **CONFIDENTIALITY**

- 9.1 Each Party will:
- 9.1.1 not during the period of this Agreement or at any time thereafter disclose to any third party or use any Confidential Information except as expressly permitted by the terms of this Agreement or as necessary to enable that Party to perform its responsibilities and exercise its rights under this Agreement (provided always that such use or disclosure is in accordance with the terms of this Agreement and subject (where appropriate) to putting in place an appropriate confidentiality agreement with any third party to whom the Confidential Information is to be disclosed) or, in relation to Confidential Information received by it from one of the other Parties, with that Party's prior written consent;
 - 9.1.2 only disclose Confidential Information to those of its officers, employees and students who have a need to know to enable that Party to fulfil its responsibilities or as otherwise permitted by the terms of this Agreement;
 - 9.1.3 ensure that each of its officers, employees and students to whom any Confidential Information is disclosed is made aware of the confidential nature thereof and complies at all times with the terms of this Clause 9; and
 - 9.1.4 take, and will ensure that each of its officers, employees and students takes, all practicable steps whilst Confidential Information is in its or their possession or control to prevent access thereto by any person not so entitled under this Agreement.
- 9.2 The obligations contained in Clause 9.1 will not extend to any information which the Party under the relevant obligation is required to provide to CENSIS or which it can show by written evidence:

- 9.2.1 is or becomes generally available to the public otherwise than by reason of a breach by a Party or by any party for whom a Party is responsible of the obligations under Clause 9.1; or
- 9.2.2 is known to that Party or to any party for whom that Party is responsible and is at that Party's free disposal prior to its receipt under this Agreement; or
- 9.2.3 is subsequently disclosed to that Party or any party for whom it is responsible without obligation of confidentiality by a third party owing no obligation of confidentiality to the Party to whom the information pertains; or
- 9.2.4 requires to be disclosed by (i) law (including any information disclosed under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004), (ii) any regulatory authority, (iii) CENSIS or SFC in connection with the Project Funding; or (iv) any court of competent jurisdiction; or
- 9.2.5 is approved for release by the owning Party; or
- 9.2.6 is independently developed, discovered or acquired by that Party without reference to any information covered by an obligation of confidentiality under this Agreement.

10. LIABILITY

[Suggested **Negotiation parameter: consider the limitation of liability in Clause 10.8.**]

- 10.1 Each Party (each an **Indemnifying Party**), shall and hereby agrees to indemnify [the other /each of the other Parties] (each an **Indemnified Party**) in full in respect of any loss, liability or damage including liability for death or personal injury, damage to property and any third party claims incurred or suffered by or imposed upon an Indemnified Party directly or indirectly to the extent arising as a result of:
 - 10.1.1 the Indemnifying Party's use or misuse of the Indemnified Party's Background IP and/ or Project Results (including Project Results which it jointly owns); or
 - 10.1.2 [in the case of the Indemnifying Party being an Industrial Collaborator,] the Indemnifying Party's negligence or wilful misconduct [or breach of any term of this Agreement].
- 10.2 The indemnity given under Clause 10.1 shall not apply to any loss, liability or damage to the extent that such loss, liability or damage is attributable to the fault, negligence or wilful misconduct of the Indemnified Party or any of its officers, employees, students or agents.
- 10.3 Each Indemnified Party hereby agrees that if it is notified by any third party of any claim or potential claim under the indemnity contained in Clause 10.1 it shall:

- 10.3.1 forthwith inform the relevant Indemnifying Party or Parties of such claim or potential claim;
 - 10.3.2 take all reasonable steps to prevent judgement by fault or by default being granted in favour of that third party;
 - 10.3.3 take all reasonable steps to ensure that each of the Indemnifying Parties are given the right to conduct proper consultations with the third party in relation to the claim or potential claim; and
 - 10.3.4 if appropriate, allow the Indemnifying Party or Parties to join in the defence (including settlement litigation or appeal) of any such claim.
- 10.4 It is acknowledged that the Project is experimental in nature and accordingly although each Party shall use its reasonable efforts to achieve the aims of the Project, none of the Parties gives any representation or warranty that any of its Background IP and/ or Project Results will be fit for any particular purpose and the Party using such Background IP and / or Project Results shall be liable for any losses or consequences arising therefrom . Subject to Clause 10.5 and the express terms of this Agreement, the Parties hereby exclude all implied terms, conditions, warranties and/or licences in relation to the Project and the Project Results.
- 10.5 No Party shall supply Background IP to another Party in the knowledge that the use such Background IP will infringe the proprietary rights of any third party. Without prejudice to the generality of the foregoing, no Party shall be obliged to carry out detailed searches in relation to third party owned Intellectual Property.
- 10.6 Subject to Clause 10.7, no Party shall, under any circumstances whatsoever, be liable to another Party, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for any:
- 10.6.1 loss of profits (direct or indirect);
 - 10.6.2 loss of sales or business;
 - 10.6.3 loss of anticipated savings; or
 - 10.6.4 any indirect or consequential loss,
- in each case even if such loss was reasonably foreseeable or within the contemplation of the relevant Party or had been brought to its attention.
- 10.7 Nothing in this Agreement shall limit or exclude any Party's liability for:
- 10.7.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 10.7.2 fraud or fraudulent misrepresentation; or

10.7.3 any other matter the exclusion or limitation of which is not permitted by law.

10.8 Each Party's aggregate liability under or in connection with this Agreement shall be limited to [the Project Funding] [twice the Project Funding] [sum of [insert sum in words and figures]].

10.9 [Negotiation parameter...some parties may self-insure. Consider deletion of this where appropriate] Each Party shall ensure that it holds appropriate insurance to cover its liabilities under this Agreement and shall provide evidence of such insurance being put in place on demand.

11. TERMINATION

11.1 Each Party shall be entitled to terminate this Agreement if any other Party passes a resolution for its winding-up, or if a court of competent jurisdiction makes an order for any Party's winding-up or dissolution, or makes an administration order in relation to any Party, or if any Party appoints a receiver over, or an encumbrancer takes possession of or sells an asset of, any Party, or makes an arrangement or composition with its creditors generally, or makes an application to a court of competent jurisdiction for protection from its creditors generally.

11.2 If the Lead Collaborator is unable or unwilling to continue with the Project and a suitable replacement cannot be found pursuant Clause 3.1, the [other Party /Parties] shall be entitled [, where mutually agreed by the Parties (other than the Lead Collaborator) and] following consultation with CENSIS, to terminate this Agreement with immediate effect.

11.3 This Agreement shall terminate automatically thirty (30) days following written notice to any Academic Collaborator from CENSIS stating that CENSIS is withdrawing the Offer Letter, permanently suspending payment under the Offer Letter and/ or is reclaiming any of the Project Funding from that Academic Collaborator [unless it is otherwise mutually agreed between the Parties (other than the Academic Collaborator causing the termination event pursuant to this Clause 11.3), with the approval of CENSIS, that the Agreement should continue].

11.4 Each Party shall be entitled to withdraw from this Agreement by serving written notice upon the other Parties if [the other Party /one or more of the other Parties] commits any breach of or default in any terms or conditions of this Agreement and the [Party / Parties] committing such breach or default fails to remedy such default or breach within [thirty (30) – sixty (60)] days following receipt of written notice of such breach or default from the Party seeking to withdraw from this Agreement, provided always that the CENSIS Project Manager has been provided with a copy of all notices served under this Clause 11.4 and has been consulted by the Party seeking to exercise its right to withdraw from this Agreement.

11.5 On termination or expiry of this Agreement, each Party shall, subject to a right of retention for the purposes of exercising any ongoing rights and/ or licences granted to it pursuant to

Clause 7.3, 7.4 (in its capacity as a CENSIS Partner) and/ or 7.5, either return or destroy all manifestations of Background IP and Project Results belonging to other Parties, at all times in accordance with the instructions of the Party who is owner of such Background IP and/ or Project Results (as applicable) within its possession or control. For the avoidance of doubt no Party shall be in breach of its obligations hereunder for retaining copies of Background IP and and/ or Project Results (as applicable) which are retained as part of its routine IT backup processes.

11.6 In the case of termination of this Agreement pursuant to Clause 11.1 or 11.3 [or withdrawal by a Party pursuant to Clause 11.4] any rights and/ or licences granted pursuant to Clause 7.3, 7.4 and/ or 7.5 to a Party which has caused the termination event to arise [or which is exercising its right to withdraw (as applicable)] shall, immediately following termination of this Agreement [or withdrawal from this Agreement (as applicable)], terminate and that Party shall return or destroy all manifestations of Background IP and Project Results [(other than any copies which have been created by that Party as part of its routine IT back-up processes)] belonging to the other [Party /Parties], at all times in accordance with the instructions of the Party who is owner of such Background IP and/ or Project Results, within its possession or control.

11.7 In the case of termination of this Agreement pursuant to Clause 11.1, 11.2, 11.3 [or withdrawal by an Academic Collaborator pursuant to Clause 11.4], each Academic Collaborator which will no longer be a Party to this Agreement shall invoice the relevant Industrial Collaborator(s) in respect of any financial contributions specified in section [x] of the Project Plan due to that Academic Collaborator as at the date of termination [or withdrawal (as applicable)] or in respect of any non-cancellable costs and/ or commitments which that Academic Collaborator has incurred or entered into and which the relevant Industrial Collaborator(s) has/ have agreed to meet (as applicable) on or prior to the date of termination of this Agreement [or withdrawal from this Agreement (as applicable)] and each Industrial Collaborator shall pay any such invoice within [thirty (30) – forty five (45)] days following the date of such invoice provided that:

11.7.1 in the case of termination pursuant to Clause 11.3, no Industrial Collaborator shall be required to make any payments pursuant to this Clause 11.7 to an Academic Collaborator from which CENSIS has withdrawn the Offer Letter, permanently suspended payment under the Offer Letter and/ or reclaimed Project Funding; and

11.7.2 all non-cancellable costs and/ or commitments incurred or entered into (as applicable) following the relevant date of written notice of termination [or withdrawal (as applicable)] will only be recoverable under this Clause 11.7 where such non-cancellable costs and/ or commitments have been approved by the relevant

Industrial Collaborator. [Suggested **Negotiation parameter: consider amending in line with the time period agreed in Clause 5.2.**]

11.8 Termination of this Agreement will not affect the rights of each Party against any other Party in respect of the period up to and including the date of termination.

11.9 The provisions of Clauses [1, 3.3.4, 5 to 10 (inclusive), 13, to 16 (inclusive) and this Clause 11] will survive termination or expiry of this Agreement.

12. **FORCE MAJEURE**

[Suggested **Negotiation parameter: consider amending the timescales set out in this Clause within the limits noted below.**]

12.1 Any delays in or failure of performance by a Party of its obligations under this Agreement shall not be considered a breach of this Agreement if and to the extent that such delay or failure is caused by occurrences beyond the reasonable control of that Party including acts of God; acts, regulations and laws of any government; strikes or other concerted acts of workers; fire; floods; explosions; riots; wars; rebellion; and sabotage; and any time for performance under this Agreement shall be extended by the actual time of delay caused by any such occurrence.

12.2 If a such an occurrence causes a delay of [three (3) – six (6)] months or more to the Project, and if such delay may reasonably be anticipated to continue, then the JSC shall consult with CENSIS to discuss which steps should be taken in respect of such occurrence.

13. **NOTICES**

13.1 Any notice required to be given under the Agreement will be served personally or by first class post, or delivered by courier, to the relevant Party at the address specified in Clause 13.2 or such other address as may be provided by the relevant Party to the other Parties from time to time for that purpose. Any notice so given will be deemed to have been duly served if personally delivered or courier, on the day of delivery or, if sent by post, forty-eight (48) hours after posting, and in proving service it will be sufficient to produce a copy of the notice properly addressed or numbered, or courier's evidence of delivery, as the case may be.

13.2 Notices to [Academic Collaborator 1] will be sent for the attention of [insert contact name] at [insert address for Academic Collaborator 1 notice].

[Notices to [Academic Collaborator 2] will be sent for the attention of [insert contact name] at [insert address for Academic Collaborator 2 notice].]

Notices to [Industrial Collaborator 1] will be sent for the attention of [insert contact name] at [insert address for Industrial Collaborator 1 notice].

[Notices to [Industrial Collaborator 2] will be sent for the attention of [insert contact name] at [insert address for Industrial Collaborator 2 notice].]

14. **GENERAL**

- 14.1 Other than as expressly set out in this Agreement, no Party's rights or obligations under this Agreement may be assigned, transferred, or sub-contracted by the relevant Party without the prior written consent of [the other Party /all other Parties]. Each Party shall be entitled to enter into sub-contracts under which it is supplied with services in relation to the Project on a fee for service basis without obtaining the prior written consent of [the other Party /all Parties] provided that each such sub-contract is on terms which are consistent and which in no way conflict with the terms of this Agreement and that each such sub-contract have been approved by CENSIS.
- 14.2 The Parties acknowledge and agree that the provisions of [Clause 3.5, 5.5, 6.1 7.4, 7.7, 8.3 and 12.2], create rights in favour of CENSIS which shall be enforceable by CENSIS as though it were a party to this Agreement in respect of such Clauses, and each Party consents to a copy of this Agreement being provided to CENSIS.
- 14.3 No failure or delay by any Party in exercising any right or remedy under this Agreement will operate as a waiver of such right or remedy nor will any single or partial exercise or waiver of any such right or remedy preclude its further exercise or the exercise of any other right or remedy.
- 14.4 This Agreement does not create any partnership or agency relationship between the Parties.
- 14.5 This Agreement constitutes the entire understanding between the Parties regarding the subject matter hereof and supersedes any prior arrangements, understandings, promises or agreements made or existing between the Parties in relation to the subject matter hereof. For the avoidance of doubt, nothing in this Agreement purports to exclude liability for fraudulent misrepresentation.
- 14.6 No addition, amendment, modification or waiver of any term of this Agreement will be effective unless it is in writing and signed by or on behalf of each of the Parties.
- 14.7 If any term of this Agreement is or becomes invalid, or is ruled illegal by any court of competent jurisdiction or is deemed unenforceable under then current applicable law from time to time in effect during the period of this Agreement, it is the intention of the Parties that the remainder of this Agreement will not be affected thereby provided that the Parties' rights under this Agreement are not materially altered. It is further the Parties' intention that in lieu of each such invalid, illegal or unenforceable term, there will be substituted or added as part of this Agreement a valid, legal and enforceable term which in effect will be as similar as possible to the effect of the original invalid, illegal or unenforceable term.
- 14.8 Each Party shall at all times comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and corruption including the UK Bribery Act 2010 (as may be amended from time to time), shall ensure compliance with such requirements (which it shall enforce

where appropriate) and shall immediately notify the other Parties of any demand for any undue financial or other advantage of any kind received by it in connection with the Project.

15. **DISPUTE RESOLUTION**

[Suggested **Negotiation parameter: consider amending the timescales set out in this Clause within the limits noted below.**]

- 15.1 Subject always to Clause 15.2, any dispute arising out of or in connection with this Agreement shall in the first instance be addressed for resolution to the nominated contact of the relevant Party set out in Clause 13 (or such equivalent person as may be notified by each Party to the other Parties from time to time) with a copy sent for information to the CENSIS Project Manager. The relevant Parties shall use all reasonable endeavours to resolve the dispute. If they are unable to resolve the dispute within [twenty (20) – sixty (60)] working days of one Party serving written notice on the other Party or Parties then either of the Parties involved in the dispute may raise proceedings in accordance with Clause 16.
- 15.2 Nothing in this clause shall affect any Party's right to raise proceedings from injunction, interdict or similar in respect of breach of the obligations of confidentiality, infringement of Intellectual Property or breach of the restrictions hereunder in any appropriate forum.

16. GOVERNING LAW AND JURISDICTION

16.1 This Agreement shall be governed by and construed in accordance with the laws of Scotland. The Parties agree that any dispute arising under this Agreement or in connection with it will be decided in the Scottish Courts which will have the exclusive jurisdiction in any such matter.

IN WITNESS WHEREOF this Agreement consisting of this and the preceding [18] pages, together with the Schedule in [two (2)] Parts annexed hereto, is executed as follows:

Subscribed for and on behalf of **[Academic Collaborator (1)]** by its duly authorised signatory, at **[insert place]** on the **[insert date]** before the witness below:

Signature of the legal signatory
Full name in print: al
Address

Signature of the Witness
Full name in print:
Address

Subscribed for and on behalf of **[Academic Collaborator (2)]** by its duly authorised signatory, at **[insert place]** on the **[insert date]** before the witness below:

Signature of the legal signatory
Full name in print:
Address

Signature of the Witness
Full name in print:
Address

Subscribed for and on behalf of **[Industrial Collaborator (1)]** by its duly authorised signatory, at **[insert place]** on the **[insert date]** before the witness below:

Signature of the legal signatory
Full name in print:
Address

Signature of the Witness
Full name in print:
Address

Subscribed for and on behalf of **[Industrial Collaborator (2)]** by its duly authorised signatory, at **[insert place]** on the **[insert date]** before the witness below:

Signature of the legal signatory
Full name in print:
Address

Signature of the Witness
Full name in print:
Address

This is the Schedule referred to in the foregoing Project Agreement between [redacted] and [redacted].

Part 1
Project Plan

Part 2
Payment Schedule

[Drafting note: this schedule should set the financial contributions which each of the Industrial Collaborators is making, including details of the amount of funding which each Industrial partner is committing to the Project, the payment dates for funding and the Academic Collaborators to whom each payment will be made.]