

STANDARD CONTRACT CREW-HEI PROJECTS (RESPONSE AND CAPACITY BUILDING)

AGREEMENT

between:

THE UNIVERSITY COURT OF THE UNIVERSITY OF ST ANDREWS, a charitable body registered in Scotland under the registration number SC013532 and incorporated by the Universities (Scotland) Act 1889, as amended by the Universities (Scotland) Act 1966, and having its principal office at College Gate, North Street, St Andrews, Fife KY16 9AJ (“USTAN”).

- and -

[INSERT NAME OF HEI], of [insert designation of HEI] (“Contractor”)

- and -

[INSERT NAME OF CO-FUNDER], of [insert designation of Co-Funder] (“Co-funders”)

WHEREAS:

1. The James Hutton Institute (JHI) was awarded grant funding by the Scottish Ministers in relation to the Centre of Expertise for Waters (CREW).
2. JHI and USTAN subsequently entered into an agreement under which (i) USTAN has responsibility for dispersing some of the said grant funding directly to the HEI establishments in relation to CREW related research activities and (ii) all intellectual property arising in connection with that agreement vests in JHI.
3. Consequently, USTAN wishes to have carried out the Project identified in Appendix A, the Contractor has submitted to USTAN an application for carrying out of the Project and USTAN and the Co-funders are willing to provide the funding to the Contractor for the Project.

NOW IT IS HEREBY AGREED:

1. The Contractor, USTAN and the Co-funders agree to observe and comply with USTAN's standard terms and conditions set out in Appendix F (the "Terms and Conditions") which are incorporated into this Agreement.
2. The Contractor will carry out the Project in accordance with this Agreement.
3. USTAN and the Co-funders will pay to the Contractor its costs properly incurred in carrying out the Project in accordance with this Agreement.
4. This Agreement supersedes and replaces any and all previous contracts, agreements and statements relating to the Project, and comprises:

This document – Form of Agreement;

Appendices:

- A – Specification and Research Proposal together with any specified amendments
- B – Pricing Schedule
- C – Reports Schedule
- D – Contacts Schedule
- E – Intellectual Property Schedule

F - The Terms and Conditions

5. The Contractor shall commence work on the Project on (the "Date of Commencement").
6. The Contractor shall complete the Project by (the "Date of Completion").
7. For the purposes of Clause 30 of the Terms and Conditions (conflict or inconsistency), the documents shall take precedence in the order in which they appear in clause 4 of this Form of Agreement.
8. The definitions herein apply equally within each Appendix hereto.

Signed on behalf of the University Court of the
University of St Andrews
by _____, an authorised
signatory at _____ on the day of _____
201[1] in the presence of:- _____
Authorised Signatory

Signature

Full Name

Address

.....

Signed on behalf of the Contractor
by _____, an authorised
signatory at _____ on the day of _____
201[1] in the presence of:- _____
Authorised Signatory

Signature

Full Name

Address

.....

Signed on behalf of the Co-funders
by _____, an authorised
signatory at _____ on the day of _____
201[1] in the presence of:- _____
Authorised Signatory

Signature

Full Name

Address

.....

THIS IS THE APPENDIX A REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN USTAN, THE CONTRACTOR AND THE CO-FUNDERS
APPENDIX A - Specification and Research Proposal

1. The title of the Project is:
2. The Project Code is:
3. The objectives of the Project are: As specified in the research proposal, submitted on the USTAN Application form, Section 10 (a) Research Objectives.

10 **Objective(s).** Please give details of (a) each research objective, (b) to what extent these objective(s) are interdependent; and (c) whether any factors exist to delay achievement of the objective(s). Where there is more than one contractor, please show clearly below the roles of each.

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4. The approaches and research plan for the Project are: As specified in the research proposal, submitted on the USTAN Application form, Section 11 (a) Approaches and Research Plan.

11 **Approaches and Research Plan.** Outline the experimental approaches to be used in realising the objectives and set out the work plan for the life of the project stating clearly how you intend to proceed. Please number the Approaches in the same way as the Objectives. Where there is more than one contractor, please show clearly below the roles of each.

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5. The primary milestones for the Project are: As specified in the research proposal on the USTAN Application form, Section 12 (a) Research Objectives.

12 **Primary milestones.** (These must number no more than four in each project year. Achievement of each must be **essential** if the objectives of the project are to be met).

Milestone	Target date	Title

THIS IS THE APPENDIX B REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN USTAN, THE CONTRACTOR AND THE CO-FUNDERS

APPENDIX B - Pricing Schedule

1. USTAN and the Co-funders, taken together, will pay to the Contractor in respect of the Project no more than:

£ inclusive of VAT.

2. In respect of each payment to be made to the Contractor under this Agreement:

2.1. The proportion to be paid by USTAN will be%

2.2. The proportion to be paid by the Co-funders will be%

2.3. The Contractor shall commence work on the Project on the “Date of Commencement”

2.4. The Contractor shall complete the Project by the “Date of Completion”

2.5. An amount equivalent to 5% of the total project cost will be retained by USTAN as part of the final payment which will be made to the Contractor once the final report is accepted by the Policy Research Advisory Group (PRAG) of the Centre of Excellence for Water (CREW) and/or USTAN.

2.6. Maximum payment in any one project year will be as follows:

Funding Body	Year 1	Year 2	Year 3	Year 4	Total
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USTAN

Total Project Costs

3. The payment arrangements shall be as follows:-

3.1. The Contractor shall provide to USTAN an accurate statement (invoice), signed on behalf of the Contractor’s Finance Department, of the Eligible Costs properly incurred by the Contractor in carrying out the Project during the relevant period. These statements shall be submitted quarterly in arrears to USTAN starting from the Date of Commencement.

3.2. Within 30 days of receiving an invoice satisfactory to USTAN and the Co-funders, USTAN shall pay to the Contractor the amount of the Eligible Costs which USTAN and the Co-funders reasonably consider to have been properly incurred by the Contractor in the carrying out of the Project during the relevant period.

3.3. In the event that no such statement satisfactory to USTAN and the Co-funders is provided within the time specified in 3.1, neither USTAN nor the Co-funders shall be under any obligation to make the relevant payment until 30 days after the date on which a statement satisfactory to USTAN and the Co-funders is received.

3.4. The final payment will be made within 35 working days of receipt of a final report satisfactory to USTAN and/or the PRAG, in accordance with paragraph 4 of Appendix C - Reporting Schedule.

- 3.5. USTAN and the Co-funders are liable to the Contractor only for their respective proportion of each payment on receipt and acceptance of satisfactory project/research deliverables, as identified in paragraph 2 above. USTAN and the Co-funders are not jointly or severally liable to the Contractor in respect of any payment to be made under the Agreement.
- 3.6. Where the Contractor is VAT registered, it shall provide to USTAN a VAT invoice in respect of the amounts of each of their respective payments.

THIS IS THE APPENDIX C REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN USTAN, THE CONTRACTOR AND THE CO-FUNDERS

APPENDIX C – Reporting Schedule

1. The Contractor shall submit the reports required by this condition to the USTAN Representative and to the Co-funders' Representative at their respective addresses set out in Appendix D and to the PRAG at:-

CREW - C/o MASTS
University of St Andrews
East Sands
Fife
KY16 8LB

Annual and Interim Reports

2. The Contractor shall submit an annual report for each Project Year in accordance with this condition. At the request of USTAN, the Contractor will submit an interim report in the same format as specified in paragraph 3 of this condition for the annual report.
3. The Contractor shall submit an annual report for each Project Year, as follows. The Contractor shall provide one hard copy of the report, and one copy by e-mail (using: crewreports@masts.ac.uk), in the format specified by or agreed with CREW and/or USTAN, no later than 4 weeks after the end of each Project Year, or, for work lasting one year or less, by a date formally agreed with the CREW and/or USTAN. This report shall:
 - 3.1. list the scientific objectives as set out in paragraph 3 of Appendix A, indicating where amendments have been agreed;
 - 3.2. indicate in non-scientific terms the scientific progress achieved since the commencement of the Project or since the last report; together with any findings of particular interest;
 - 3.3. indicate whether the scientific objectives in paragraph 3 of Appendix A are appropriate for the remainder of the Project, giving reasons for any changes, together with financial, staff and time implications;
 - 3.4. list the primary milestones for the relevant Project Year as set out in paragraph 5 of Appendix A, indicating which primary milestones have been met and whether the remaining primary milestones appear realistic;
 - 3.5. indicate the number of staff years by grade of direct scientific effort and the actual costs expended;
 - 3.6. list any outputs, e.g. published papers or presentations and identify any opportunities for exploiting any Intellectual Property or technology transfer arising out of the Project;
 - 3.7. it is the responsibility of the Contractor to ensure that no publication of results occurs that could prejudice patent applications or filings;
 - 3.8. comment briefly on any new scientific opportunities which may arise from the Project.

Final Report

4. The Contractor shall submit a final report within **two weeks** of completion of the Project. Unless specified otherwise in the project specification and or mutually agreed by the Contractor, USTAN and the Co-funders or their appointed agents, the Contractor shall provide two hard copies of the report, and one copy on e-mail (using: crewreports@masts.ac.uk), in the format specified by or agreed with USTAN. This report shall consist of an identification sheet, executive summary and

scientific record. In addition annexes of detailed information may be added. The final report shall contain:

- 4.1. a sheet identifying the Project's code and title, as set out in Appendix A; the representatives of the Parties, as set out in Appendix D; the Contractor's Representative's address; the Project's Date of Commencement and Date of Completion; the final year and total Project costs; total staff input by grade; whether any Intellectual Property Rights have arisen from the Project (which may be verified by an independent Intellectual Property Rights advisor); and the scientific objectives and the primary milestones for the final year;
- 4.2. a one page executive summary written in English in a style understandable to the intelligent non-scientist and containing the following:
 - 4.2.1. the objectives of the Project and why it was important to do it;
 - 4.2.2. the main findings of the Project presented in bullet form (this should be the major part of the executive summary);
 - 4.2.3. any action to follow the research, including action in relation to Intellectual Property Rights and/or technology transfer, where relevant, including whether the advice of an independent Intellectual Property Rights expert has been obtained.
- 4.3. a scientific report, stapled (i.e. not bound), copied back to back and in a standard scientific format, stating:
 - 4.3.1. the scientific objectives and primary milestones for the Project as set out in paragraphs 3 and 5 of Appendix A;
 - 4.3.2. the methods used and results of the research;
 - 4.3.3. discussion of the results and their reliability;
 - 4.3.4. the extent to which the objectives set out in paragraph 3 of Appendix A have been met;
 - 4.3.5. details of possible future research and how this may relate to other work in the field, identifying further avenues as appropriate.
- 4.4. a list of final or draft publications arising out of the Project together with copies of any other relevant papers.
5. Final reports may be made available, on request by USTAN, to enquirers. When submitting the final report to USTAN the Contractor shall indicate any information contained in the report which it considers to be commercially sensitive in which event USTAN shall not disclose such information without first having consulted with the Contractor.
6. USTAN reserves the right to return to the Contractor any annual or final report submitted by the Contractor which is not, in the reasonable opinion of USTAN or its agents, satisfactory, either in form or content, having regard to the provisions of this Agreement. In the event that such a report is returned to the Contractor, the Contractor shall remedy any deficiencies identified by USTAN and submit a revised report at no additional cost to USTAN or the Co-funders.
7. The Contractor shall supply any additional reports regarding the progress of the Project, at such time or times as USTAN may reasonably require.
 - 7.1. In the event that the Contractor fails to provide any one or more of the annual, interim or final reports due in terms of this Appendix, or any other draft or interim reports which may have been agreed to, by the specified or agreed time-limit and/or to the specified reporting standard required by USTAN, either in terms of this Contract or as notified to the Contractor by USTAN, USTAN will be entitled to impose and collect a penalty.

- 7.2. The penalty will entitle USTAN to reduce the contract payment due to the Contractor at a rate of £500 for the first week or part thereof for the period of delay in providing a Report to the required standard. For subsequent delay in providing a report of the required standard, the sum retained by USTAN as final payment will be further reduced at a rate of 1% of the total project cost to USTAN per week or part thereof.
- 7.3. CREW and the Co-funders must be acknowledged on all printed and display materials associated with the Project, in press releases and any media coverage.
- 7.4. The content of published materials, publicity and press releases is to be agreed with CREW and/or USTAN prior to publication.
- 7.5. Use of the CREW logo must comply with the CREW Identity Guidelines available on the CREW website. The use of the Co-funder's logo must comply with any comparable requirements.
- 7.6. USTAN and CREW are able to publicise the Project and any publications on their own and on any associated websites and in public documents. USTAN and/or CREW may at any time request written updates and digital material (including images) for such purposes.
- 7.7. The Contractor warrants to USTAN that the Project to be funded by USTAN is original and that it is not a violation or infringement of any existing copyright or licence of any other right of any other person or organisation.
- 7.8. The Contractor undertakes to obtain appropriate permission for any copyright material used in the Project, where the copyright rests with a person or organisation other than the Contractor. The Contractor shall provide appropriate details, including proof of consent and the required acknowledgements.
- 7.9. On receiving notification from USTAN and/or CREW that the final report from the Project is considered acceptable, the Contractor shall assign all copyrights and rights to the nature of the copyright in the Project to which it is legally entitled to USTAN pursuant to the terms of Appendix E.
- 7.10. USTAN shall ensure that the Contractor is appropriately acknowledged in publication of the final report, subject to the report being approved by the USTAN and/or CREW.

THIS IS THE APPENDIX D REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN USTAN, THE CONTRACTOR AND THE CO-FUNDERS

APPENDIX D – Contacts Schedule

1. USTAN's Representative will be: **Dr Mark James**
2. USTAN's address for correspondence and submission of invoices will be:

CREW - C/o MASTS
University of St Andrews
East Sands
Fife
KY16 8LB
3. The Contractor's Representative will be:
4. The Contractor's address for correspondence and service will be:
5. Where the Contractor consists of more than one person there shall be only one individual acting as the Contractor's Representative.
6. The Contractor's Key Personnel will be:
7. The Co-funders for the purposes of this Agreement are:
8. The Co-funders' address for correspondence and service will be:
9. The Co-funders' Representative will be: ¹

¹ If there is more than one Co-funder a Co-funder's Representative should be listed for each Co-funder with the relevant address.

THIS IS THE APPENDIX E REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN USTAN, THE CONTRACTOR AND THE CO-FUNDERS

APPENDIX E – Intellectual Property Schedule

Ownership and Protection

1. Subject to any prior rights and the rights of third parties, including H M Comptroller General with regard to Crown Copyright, the Contractor hereby transfers, assigns and/or vests in USTAN and, insofar as it is not competent for the Contractor to currently transfer, assign and/or vest, hereby undertakes and agrees to transfer, assign and/or vest in USTAN from the date of creation its whole right, title and interest in and to all copyright and all other Intellectual Property Rights in relation to the Results, including, but not limited to:
 - 1.1. the title in any patent, trade mark, other protection and/or registration in relation to such Intellectual Property;
 - 1.2. the right to apply for and/or register any patent pursuant to the Patents Act 1977;
 - 1.3. any database rights, for the purposes of the Copyright and Rights in Databases Regulations 1997.
2. The Contractor shall:
 - 2.1. ensure that all its staff, students and sub-contractors are and will be engaged in relation to the Agreement and the Project on terms which do not entitle any of them to copyright or any other Intellectual Property Rights or other rights in the Results;
 - 2.2. ensure that it can and remains entitled to transfer, assign and/or vest free from any encumbrances any title and/or rights necessary to effect the vesting required by this schedule;
 - 2.3. do all things and execute at the Contractor's expense any documents reasonably required to give effect to such vesting in USTAN;
 - 2.4. co-operate with and assist USTAN in obtaining and/or enforcing any and all such Intellectual Property Rights;
 - 2.5. ensure that confidentiality and non-disclosure agreements are in place to ensure that the ability to secure or maintain such Intellectual Property Rights are not compromised.

Commercial Exploitation

3. The Contractor shall identify and inform USTAN of any such Intellectual Property Rights which it considers suitable for commercial exploitation. Where the Contractor has identified an opportunity for the commercial exploitation of the Intellectual Property Rights it may either enter in to discussions with USTAN and/or JHI in relation to licensing such Intellectual Property Rights or provide such assistance as is required by USTAN and/or JHI to facilitate commercial exploitation.
4. The Contractor shall identify and inform USTAN of any Intellectual Property Rights which may be suitable for patent, copyright, registered design, trade mark or other legal protection and shall use its reasonable endeavours to assist USTAN, if requested, in relation to applying for such protection throughout or in any part of the world in the name of USTAN or JHI.
5. If any commercial revenues result from the commercial exploitation of such Intellectual Property Rights, the Contractor will be entitled to an equitable share of any such revenues that accrues to USTAN or JHI as the case may be as agreed.
6. The Contractor shall have sole responsibility for making any payments due to its employees or contractors under any rewards or incentive schemes, whether contractual, ex gratia, or statutory, in relation to the Results.
7. For the avoidance of doubt, the provisions of this schedule do not apply to and do not affect any Intellectual Property Rights in existence before the commencement of the Project.

THIS IS THE APPENDIX F REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN USTAN, THE CONTRACTOR AND THE CO-FUNDERS

APPENDIX F – Terms and Conditions

1. Definitions

1.1. In these terms and conditions the following words and expressions shall have the meanings given to them below, unless the context otherwise requires:

“Agreement”	The agreement between USTAN, the Co-funders and the Contractor incorporating this Document and the Appendices A to F.
“Appendix”	One of the appendices lettered A to F incorporated into the Agreement
“Application”	The “Application for a Research Contract with USTAN” submitted by the Contractor to USTAN in respect of the Project, which forms part of this Agreement and is referred to in Appendix A.
“Business Day”	A day (other than a Saturday or Sunday) on which banks in the city of London are generally open for business
“Contractor”	The person or persons named on the Agreement as the Contractor. Where the Contractor consists of more than one person, the obligations of those persons in respect of the Agreement shall be joint and several.
“Contractor's Representative”	The person named in paragraph 3 of Appendix D, subject to the provisions of Condition 4 of this Appendix F.
“Co-funders”	Where applicable, the person or persons or organisation(s) named as “Co-funders” in Appendix D.
“Co-funders’ Representative”	Where applicable, the person or persons named in paragraph 8 and 10 of Appendix D, subject to the provisions of Condition 4 of this Appendix F.
“CREW”	Centre of Expertise for Waters
“Date of Commencement”	The date set out in paragraph 5 of the form of Agreement.
“Date of Completion”	The date set out in paragraph 6 of the form of Agreement.
“Eligible Costs”	Costs incurred by the Contractor for the purposes of the carrying out of the Project, limited to those costs identified in the ‘Financial Guidelines for Project Cost Estimates’ section of the Application.
“Intellectual Property Rights”	Any copyright, design right, trade mark, trade name, know-how, patentable invention for the purposes of the Patents Act 1977, database right for the purposes of the Copyright and Rights in Databases Regulations 1997, and all intellectual property, the

rights to which are protectable by law.

“JHI”	The James Hutton Institute, Craigiebuckler, Aberdeen, AB15 8QH, a Scottish Charitable Company, SCO41796, registered in Scotland Number SC374831,
“Key Personnel”	Any member of the Contractor’s personnel identified by name or job title as key personnel in Appendix D.
“Know-how”	All information not in the public domain held in any form (including, without limitation, oral and written instructions, diagrams, drawings, formulae, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists and scientific methods) used in connection with or arising as a result of the Project.
“Parties”	USTAN, the Contractor and the Co-funders.
“Period for the Project”	The period for the carrying out of the Project, being the period between the Date for Commencement and the Date for Completion.
“Project”	The research project particulars of which, are set out in Appendix A.
“Project Year”	Each period of 12 months during the Period for the Project calculated from the Date for Commencement.
“PRAG”	Policy Research Advisory Group.
“Results”	means any inventions, designs, information, Know-how, specifications, formulae, data, processes, methods, techniques, and other technology and the Intellectual Property Rights therein created by agents, employees, students or sub-contractors of the Contractor as a result of the Project.
“USTAN”	University Court of the University of St Andrews
“USTAN’s Representative”	The person named in paragraph 1 of Appendix D, subject to the provisions of Condition 4 of this Appendix F.
“Schedule”	Any of the schedules annexed to the Agreement.
“Terms and Conditions”	USTAN standard terms and conditions set out in this Appendix F
“Territory”	The world, universe or any part thereof.

1.2. Unless the context otherwise requires, references in these Terms and Conditions:

- 1.2.1. to the Contractor or to USTAN or to the Co-funders shall, where appropriate, be references to any lawful successor, assignee or transferee;
- 1.2.2. to the Contractor shall, where appropriate, be references to each individual person constituting the Contractor;
- 1.2.3. to the Co-funders shall, where appropriate, be references to each individual person constituting the Co-funders. Where there are no Co-funders, references to the Co-funders shall have no meaning or effect;

- 1.2.4. to conditions are references to the conditions of these Terms and Conditions unless provided otherwise;
- 1.2.5. to "person" or "third party" include any individual, company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency, whether or not having a separate legal personality;
- 1.2.6. to one gender include all genders, and references to the singular include the plural and vice versa;
- 1.2.7. to any statute, statutory provision or regulation, are references to that statute, statutory provision or regulation, as from time to time amended, extended or re-enacted.

1.3. The headings in this document are for convenience only, and shall be ignored in construing these Terms and Conditions.

2. Duration

- 2.1. The Contractor shall commence work on the Project no later than the Date of Commencement.
- 2.2. The Contractor shall complete the Project by the Date of Completion, unless the parties have agreed in advance in writing to accept a different date, which will then become the new Date for Completion.

3. Payment

- 3.1. Payment shall be made in accordance with the provisions of the Appendix B - Pricing Schedule.
- 3.2. The Contractor shall submit all invoices relating to payments to be made by USTAN to the address given in paragraph 2 of the Appendix D- Contacts Schedule.

4. Payment of Contractors and Sub-contractors

- 4.1. Where the Contractor enters into a sub-contract for the provision of services as part of the Project, the Contractor shall ensure that a term is included in the sub-contract which requires the Contractor to pay all sums due to the sub-contractor within 30 days after the Contractor has verified the relevant invoice.
- 4.2. The Contractor shall use reasonable endeavours to verify the invoices promptly.
- 4.3. Where the Contractor becomes liable to pay interest payments to a sub contractor under the provisions of the Late Payments of Commercial Debts (Interest) Act 1998, USTAN will not reimburse those costs.
- 4.4. Payments made by USTAN in accordance with the Agreement shall not exceed the amounts specified in paragraph 2.6 of Appendix B – Pricing Schedule.
- 4.5. The total amount of the payments to be made by the Co-funders to the Contractor shall not exceed the amount specified in paragraph 2.2 of Appendix B – Pricing Schedule.
- 4.6. The Contractor shall provide to USTAN and the Co-funders an accurate statement (invoice), signed on behalf of the Contractor's Finance Department, of the Eligible Costs properly incurred by the Contractor in carrying out the Project during the relevant period, this statement to show separately the costs to be met by USTAN and the Co-funders. These statements shall be submitted quarterly in arrears from the Date of Commencement of the Project as specified in Appendix B – Pricing Schedule.
- 4.7. Subject to the provisions of Appendix C – Reporting Schedule and completion of the reports specified in Appendix C to the satisfaction of USTAN and the Co-funders, USTAN and the Co-funders shall pay to the Contractor the amount of the Eligible Costs which USTAN and the Co-funders reasonably consider to have been properly incurred by the Contractor in the

carrying out of the Project during the relevant period, within 30 days of receiving a statement satisfactory to USTAN and the Co-funders.

- 4.8. In the event that no such statement satisfactory to USTAN and the Co-funder is provided within the time specified in Condition 4.7, neither USTAN nor the Co-funder shall be under any obligation to make the relevant payment until 30 days after the date on which a statement that is satisfactory to USTAN and the Co-funders is received by each.
- 4.9. The final payment will be made within 35 working days of receipt of a final report satisfactory to USTAN, subject to the provisions of Appendix C – Reporting Schedule and completion of the reports specified in Appendix C to the satisfaction of USTAN and the Co-funders, as required by Condition 6 of Appendix C.
- 4.10. USTAN and the Co-funders are liable to the Contractor only for their respective proportion of each payment, as identified in paragraph 2 of Appendix B, on receipt and acceptance of satisfactory project/research deliverables. USTAN and the Co-funders are not jointly or severally liable to the Contractor in respect of any payment to be made under the Agreement.
- 4.11. Where the Contractor is VAT registered, it shall provide to USTAN and to the Co-funders a VAT invoice in respect of the amounts of each of their respective payments.

5. Nominated officers

- 5.1. USTAN's Representative shall be the person named in paragraph 1 of Appendix D – Contacts Schedule, or such other person that USTAN may nominate having given 14 days notice to the Contractor and the Co-funders.
- 5.2. The Contractor's Representative shall be the person named in paragraph 3 of Appendix D – Contacts Schedule, or such other person that the Contractor may nominate having given 14 days notice to USTAN and the Co-funders.
- 5.3. The Co-funders' Representative shall be the person or persons named in paragraph 9 of Appendix D – Contacts Schedule, or such other person that the Co-funders may nominate having given 14 days notice to USTAN and the Contractor.

6. Contractor's Status

- 6.1. In carrying out the Project, the Contractor shall be acting as principal and not as agent or employee of USTAN or Co-funders. Accordingly:
 - 6.1.1. The Contractor shall not (and shall ensure that its agents, sub-contractors and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of USTAN or Co-funders, and
 - 6.1.2. Nothing in the Agreement shall impose any liability on USTAN or Co-funders in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of USTAN or Co-funders to the Contractor that may arise by virtue of either a breach of the Agreement or any negligence on the part of USTAN or Co-funders, their staff or agents.

7. Warranties

- 7.1. The Contractor warrants to USTAN and to the Co-funders that:
 - 7.1.1. the Contractor will carry out and shall ensure that its employees, agents and sub-contractors also carry out the Project with due diligence and reasonable skill and care, in accordance with best professional, technical and scientific knowledge and practice, and any legislative requirements;
 - 7.1.2. any materials or processes used in connection with the carrying out of the Project shall be in accordance with standards set out in the Agreement;

- 7.1.3.the Contractor will deploy in the performance of the Project only suitably qualified, trained, experienced and (where appropriate) supervised staff, together with any sub-contractors intimated to and approved by USTAN and the Co-funders;
- 7.1.4.the proper use by USTAN and any Co-funders of any documentation, materials or results delivered by the Contractor pursuant to the Agreement shall not, to the best of the Contractor's knowledge and belief, constitute an infringement of the Intellectual Property Rights of any third party. ;
- 7.1.5.the Contractor has understood the nature and extent of the Project to be carried out and satisfied itself in relation to all matters connected with the Project including the supply of and conditions affecting labour, the suitability of the premises where the Project is to be carried out and any equipment necessary for the carrying out of the Project subject to all such matters being reasonably discoverable by the Contractor.
- 7.1.6.the Contractor will use its reasonable endeavours to identify commercial exploitation opportunities for the Results.

7.2. Nothing in this Agreement shall be taken as limiting or excluding USTAN's or the Co-funders' rights or the Contractor's obligations pursuant to any statute, statutory instrument or the common law.

8. Limitation of liability

- 8.1. In the event of any breach or breaches of this Agreement by USTAN or by the Co-funders, neither USTAN nor the Co-funders shall be liable to the Contractor in respect of any resulting:
 - 8.1.1.loss of profit, business, revenue, goodwill or anticipated savings;
 - 8.1.2.indirect or consequential loss or damage.
- 8.2. The aggregate liability of USTAN to the Contractor, or of the Co-funders to the Contractor, arising out of any breach or breaches of this Agreement shall in respect of USTAN be limited to the sum identified against USTAN in Appendix B and in respect of the Co-funders be limited to the sum identified against the Co-funders in Appendix B.

9. Indemnities

- 9.1. The Contractor shall indemnify and keep indemnified on a full and unqualified basis USTAN and the Co-funders against any and all:
 - 9.1.1.reasonable actions, claims, demands, costs, charges and/or expenses arising out of any loss or damage (including negligence, breach of contract, breach of statutory duty, consequential and indirect loss, or other wrongful act or omission on the part of the Contractor) or injury (including death) of any person or to any property which arises out of, or in connection with this and any sub-contractor's performance of the Project.
 - 9.1.2.infringement or alleged infringement by the Contractor of any Intellectual Property Right in relation to the Project
- 9.2. The indemnity contained in Condition 9.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of USTAN, its agents or the Co-funders.

10. Insurance

- 10.1. The Contractor shall have in force and maintain insurance with a reputable insurance company, including (but not limited to) employer's liability, public liability and professional indemnity, for such range of cover as the Contractor deems appropriate but covering at least all matters which are the subject of the indemnities or compensation obligations under these Conditions in such sum as may be specified in the Agreement, or, if no such sum is specified, the sum of not less than £1 million in respect of any single claim for professional indemnity and not less than £1 million in respect of any single claim with respect to public liability and not less than £5 million employer's liability (unless legally exempt) in respect of any single claim.

- 10.2. The Contractor shall ensure that any sub-contractor involved in carrying out the Project shall have in force and maintain insurance with a reputable insurance company, including (but not limited to) employer's liability, public liability and professional indemnity, for such range of cover as the Contractor deems appropriate but covering at least all matters which are the subject of the indemnities or compensation obligations under these Conditions in such sum as may be specified in the Agreement, or, if no such sum is specified, the sum of not less than £1 million in respect of any single claim.
- 10.3. The policy or policies of insurance referred to in Conditions 10.1 and 10.2 shall be shown to USTAN's Representative, whenever he requests, together with satisfactory evidence of payment of premiums. In the event that non-disclosure of policies to third parties is a mandatory requirement set by insurers either a copy of the policy or satisfactory evidence of payment of premiums for the relevant types of insurance cover must be provided.

11. Records and Monitoring of Progress

- 11.1. In order to monitor the Contractor's performance of the Project, USTAN's Representative or its servants or agents, or the Co-funders by their servants or agents, may:
- 11.1.1. inspect at all reasonable times and, save where USTAN or the Co-funders have good reason not to give any notice, on reasonable notice, any and all records of the Contractor connected with its activities under the Agreement;
 - 11.1.2. enter into and inspect at all reasonable times and, save where USTAN or the Co-funders have good reason not to give any notice, on reasonable notice, all facilities (whether at the Contractor's premises or elsewhere) used by the Contractor in its performance of its obligations under the Agreement,
- and the Contractor specifically agrees to do all it reasonably can at all times to ensure compliance therewith.
- 11.2. The Contractor shall retain or ensure that it has access to all records which relate to the Project. On completion of the Project, or in the event that the Agreement is terminated pursuant to Condition 24 or otherwise, the Contractor shall at the direction of USTAN either retain or transfer to USTAN those records required by USTAN, or, where such records are in the possession of any third party, procure that the same is done. If USTAN requires the Contractor to transfer the records to a third party, the Contractor shall be entitled to retain a copy of them.

12. National Audit Act

- 12.1. For a period of not less than 3 years after the completion of the Project or, where relevant, its termination, the Contractor shall retain in its possession all records and documentation relating to the Project unless they have been transferred to USTAN or a third party in accordance with Condition 11.2 above.
- 12.2. USTAN may require the Contractor to permit a representative of the Contractor and a designated accountant to examine such documents as USTAN may reasonably require for the purposes of the National Audit Act 1983 which are in the possession, custody or control of the Contractor, and USTAN may require the Contractor to produce such oral and/or written explanations as may reasonably be required.
- 12.3. This Condition does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under section 6(3)(d) and 6(5) of the National Audit Act 1983.

13. Contractor's Performance and Personnel

- 13.1. The Contractor shall properly manage and monitor the Project and inform USTAN immediately if any aspect of the Agreement is not being or cannot be performed.

- 13.2. The Contractor shall provide all the facilities and equipment that are necessary to complete the Project.
- 13.3. The Contractor shall deploy sufficient personnel of appropriate qualifications, competence and experience to complete the Project to time and shall ensure that those personnel are properly managed and supervised.
- 13.4. The Contractor shall give USTAN, if so requested, full particulars of all persons who are or may be at any time employed on the Project.
- 13.5. If, after due consultation with the Contractor, USTAN together with the Co-funders gives the Contractor notice that any person or equipment is to be removed from involvement in the Project, the Contractor shall take immediate steps to comply with such notice and such decision of USTAN shall be final and conclusive.
- 13.6. The Contractor shall take all reasonable steps to avoid any changes of Key Personnel, but where the Contractor considers it necessary to do so, it will give USTAN not less than one month's notice of any intention to change any Key Personnel and the reasons for such change.

14. Publication and Disclosure

- 14.1. Subject to the provisions of Appendix C and Conditions 14.3, 14.4 and 14.6, the Contractor shall endeavour to make information about, and results from the Project generally available, and may do so provided it acknowledges in any public statement the financial support of USTAN and of the Co-funders.
- 14.2. Subject to the requirements of Appendix C USTAN its agents and CREW shall have the right to disclose, copy or otherwise distribute to the public or use in any way any information arising out of the Project or comprised in any work relating to the Project, as it sees fit.
- 14.3. Where the Project, or any matter related to it, has been identified as being sensitive by:
 - 14.3.1. the Contractor or the Co-funders, or
 - 14.3.2. USTAN, as notified in writing to the Contractor or the Co-funders,the Contractor or the Co-funders shall give written notice to be received by USTAN at least 10 working days before any planned public statement or other disclosure relating to the Project, providing details of the information proposed to be disclosed, the reason, and the medium of disclosure.
- 14.4. The Contractor or Co-funders shall notify USTAN immediately if approached by the media about the Project. The Contractor or Co-funders shall notify USTAN immediately if approached by anyone about a matter related to the Project which is considered sensitive by the Contractor or the Co-funders, or by USTAN as notified to the Contractor or Co-funders in accordance with Condition 14.3.2.
- 14.5. For the avoidance of doubt, the notifications required by Conditions 14.3 and 14.4 are for the purposes of informing USTAN or the Contractor or Co-funders (as the case may be) and are not designed to interfere with the issue of any public statement.
- 14.6. Where the carrying out of the Project results in, or materially contributes to, the creation of Intellectual Property Rights which the Contractor or USTAN or JHI considers may be suitable for commercial exploitation or for intellectual property protection, no disclosure of information may be made by the Contractor or the Co-funders which would jeopardise such exploitation.

- 14.7 The Parties acknowledges that, in order to be compliant with the Freedom of Information Act 2000, the Freedom of Information (Scotland) Act 2000, the Environmental Information Regulations 2004, the Environmental Information (Scotland) Regulations 2004 or any other applicable legislation governing access to information (the "FOI Legislation"), to which they may be subject any Party may be obliged to provide information, on request, to third parties that relates to this Agreement.
- 14.8 In the event that a Party ("the receiving Party") receives a request for information relating to the Agreement falling within the scope of the FOI Legislation, it shall be entitled to disclose such information as is necessary in order to ensure its compliance with the FOI Legislation. Where a Party reasonably considers that information is exempt from disclosure, it shall use reasonable endeavours to consult with the other Parties, but the receiving Party's decision as to whether such information should be disclosed shall be final and binding.
- 14.9 In the event that a Party requires the assistance of any other Party in supplying any information falling within the scope of the FOI legislation that is held or controlled by that Party or any other person engaged in relation to the Agreement, the other Party will provide such assistance, at its own cost within ten (10) days of receiving the request.
- 14.10 The receiving Party shall not be liable for any loss, damage, harm or other detriment suffered by any other Party arising from the disclosure of any information falling within the scope of the FOI Legislation.

15. Data Protection

- 15.1. Where the Contractor processes personal data (as defined in section 1(1) of the Data Protection Act 1998) in carrying out the Project the Contractor shall take such appropriate technical and organisational measures as are necessary to comply with the seventh data protection principle as provided by Part I of the Data Protection Act 1998 to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

16. Equipment

- 16.1. All equipment purchased by the Contractor for use on the Project shall, where reasonably practicable, be acquired by competitive tender.
- 16.2. Unless otherwise agreed in writing with USTAN, the Contractor shall provide the equipment necessary for the provision of the Project.
- 16.3. The Contractor shall maintain all items of equipment in good and serviceable condition.
- 16.4. All equipment shall be at the risk of the Contractor and USTAN shall have no liability for any loss of or damage to any equipment.

17. Intellectual Property

- 17.1. Specific conditions applying to Intellectual Property arising from the Project are subject to the provisions of Appendix E.

18. Infringement of Intellectual Property and Confidentiality between Parties

- 18.1. Each Party shall inform the other Party promptly if it becomes aware of any infringement or potential infringement of any of the Results, and the Parties shall consult with each other to decide the best way to respond to such infringement.

19. Infringement of Third Party Rights

- 19.1. If any warning letter or other notice of infringement is received by a Party, or legal suit or other action is brought against a Party, alleging infringement of third party rights in the manufacture, use or sale of any licensed product or use of any patents or Intellectual Property Rights, that party shall promptly provide full details to the other Party, and the Parties shall discuss the best way to respond.

20. Termination

- 20.1. In the event that the Contractor commits at any time any of the following defaults:
- 20.1.1. failure to progress the Project to the reasonable satisfaction of USTAN or the Co-funders;
 - 20.1.2. breach of any of the warranties in Condition 7;
 - 20.1.3. failure to provide any report in accordance with Appendix C;
 - 20.1.4. failure to effect the insurances required by Condition 10;
 - 20.1.5. failure to comply with the inspection requirements of Condition 11;
 - 20.1.6. failure to keep and/or make available for inspection the records required by Condition 12;
 - 20.1.7. failure to provide the information required by Condition 13;
 - 20.1.8. making any public statement contrary to Condition 14;
 - 20.1.9. failure to take appropriate steps to comply with the seventh data protection principle in accordance with Condition 15;
 - 20.1.10. failure to comply with the requirements as to Intellectual Property Rights in accordance with Appendix E;

USTAN may issue a notice to the Contractor in accordance with Condition 26.1, identifying the default and, where possible, requiring the Contractor to remedy that default.

- 20.2. If the Contractor fails to remedy the default within 30 days of the above notice, or if USTAN reasonably considers that the default is not capable of remedy, USTAN and the Co-funders may without prejudice to any other rights or remedies terminate this Agreement by written notice to the Contractor with immediate effect.
- 20.3. If the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, USTAN may terminate this Agreement with immediate effect, by written notice to the Contractor.
- 20.4. The Contractor shall notify USTAN immediately if, in relation to the Contractor's business:
- 20.4.1. a resolution is passed for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation and reconstruction not involving insolvency); or
 - 20.4.2. any court makes an administration order or winding-up order, or the Contractor makes a composition or arrangement with creditors; or
 - 20.4.3. an administrator, administrative receiver, receiver, or manager is appointed; or
 - 20.4.4. possession is taken of any of the Contractor's assets under the terms of a floating charge.
- 20.5. The Contractor shall forthwith inform USTAN and Co-funders in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status, including, where the Contractor is a company as defined in the Companies Act 1985, any change in "control" as defined in Section 416 of the Income and Corporation Taxes Act 1988.

- 20.6. On the occurrence of any of the events described in Condition 20.4 or 20.5 USTAN together with the Co-funders shall be entitled to terminate the Agreement by written notice to the Contractor with immediate effect.
- 20.7. In the event that the Co-funders:
- 20.7.1. fail to make any payment in accordance with Appendix B; or
 - 20.7.2. repudiate the Agreement;
- USTAN may issue a notice to the Contractor in accordance with Condition 26.1, identifying the default of the Co-funders, and, without prejudice to any other rights or remedies, terminating the Agreement with immediate effect.
- 20.8. Without prejudice to the provisions of this Condition, either Party may submit a request to the other Party to withdraw from the Agreement. The Agreement may be terminated by written agreement between the Contractor and USTAN and the Co-funders at any time.
- 20.9. Where USTAN is the sole funder, and without prejudice to the other provisions of this Condition, USTAN may, at any time, terminate the Agreement by giving the Contractor not less than 30 days written notice.
- 20.10. USTAN may, during any notice period direct the Contractor:
- 20.10.1. to refrain from commencing the Project or any part of the Project;
 - 20.10.2. to cease work immediately; or
 - 20.10.3. to complete, in accordance with Agreement, any part of the Project, which shall be paid at the agreed price or, where no agreement exists as to price, a fair and reasonable price.
- 20.11. Except as provided in this Agreement, termination of the Agreement shall not affect:
- 20.11.1. any obligation or liability of any Party which has accrued at the date of termination
 - 20.11.2. any of the provisions of this Agreement which are intended to continue to have effect after the Agreement has been terminated.

21. Payment on termination

- 21.1. Without prejudice to any other rights or remedies of USTAN or of the Co-funders, in the event of the Agreement being terminated:
- 21.1.1. by USTAN in accordance with Condition 20 by reason of the default of the Contractor;
or
 - 21.1.2. otherwise by reason of the Contractor's breach of the Agreement,
- neither USTAN nor the Co-funders shall be under any obligation to make any payment to the Contractor for such period as is reasonable for USTAN and the Co-funders to assess the loss and/or damage suffered as a result of the termination.
- 21.2. After such period, and except where the Agreement has been terminated pursuant to Condition 20.7, USTAN and the Co-funders may set off against any sums otherwise due to the Contractor, or recover as a debt, the amount of loss and/or damage USTAN and/or the Co-funders have reasonably assessed as resulting from the termination of the Agreement. This amount will be limited to three times the contract price or the level of insurance retained by the Contractor as specified in Conditions 10.1 and 10.2 which ever is greater.
- 21.3. Where the Agreement is terminated by USTAN in accordance with Condition 20.8, the Contractor shall be entitled to claim from USTAN reimbursement of all reasonable costs necessarily and properly incurred by him in relation to the orderly cessation of the Project, including any commitments, liabilities or other expenditure unavoidably incurred as a result of the termination of the Agreement, but excluding loss of profits. The liability of USTAN under

this Condition shall not exceed the total sums payable for the Project, as set out in Appendix B.

- 21.4. Any overpayment by USTAN or Co-funders to the Contractor, whether of the agreed price or Value Added Tax, shall be a sum of money recoverable by USTAN or Co-funders from the Contractor.

22. Transfer of rights and obligations

- 22.1. The Contractor shall not sub-contract, transfer, assign, charge, or otherwise dispose of the Agreement or any part of it without the prior written consent of USTAN and Co-funders.
- 22.2. The Contractor shall ensure, if so requested by USTAN, that an assignee enters into a novation agreement with USTAN and Co-funders to perform the Agreement as if the assignee were a party to the Agreement in lieu of the Contractor.
- 22.3. The Contractor shall ensure that any sub-contract complies with the terms and conditions of the Agreement, so far as they are applicable and shall provide to USTAN, upon request, copies of any sub-contracts. Any sub-contract shall not relieve the Contractor of its obligations under the Agreement.
- 22.4. USTAN and/or the Co-funders may at any time, on written notice to the Contractor, transfer or assign all or any rights and/or obligations under the Agreement.

23. Rights of Third Parties

Save to the extent expressly set out in this Agreement, this Agreement is not intended nor shall it create any rights, entitlement, claims or benefits enforceable by any person that is not a party to it.

24. Waiver and variation

- 24.1. No delay by USTAN or by the Co-funders in enforcing or expressing any right, either arising out of the Agreement or any right in respect of any breach of the Agreement by the Contractor, shall constitute a waiver of such right.
- 24.2. No waiver by USTAN or by the Co-funders of any breach of the Contractor's obligations shall constitute a waiver of any other prior or subsequent breach.
- 24.3. Any variation of any provision of this Agreement must be effected in writing and issued by USTAN. No purported variation by any other means shall bind USTAN or the Co-funders.

25. Severance

- 25.1. If any condition or provision of the Agreement which is not of a fundamental nature is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction in any proceedings relating to the Agreement, such provision shall be severed and the validity or enforceability of the remainder of the Agreement shall not be affected thereby.

26. Notices

- 26.1. Any notice required to be given under, or any communication between the parties with the respect to any of the provisions of the Agreement shall be in writing in English and shall be deemed duly given if signed by or on behalf of a duly authorised officer of the party giving the notice and if left at, or sent by pre-paid registered or recorded delivery post, or by facsimile transmission or other means of electronic telecommunication in permanent written form to the address of the receiving party as specified in the Agreement (as or amended from time to time by due notice in writing to other party):-

26.2. Any such notice or other communication shall be deemed to have been given and received by the addressee:-

26.2.1. at the same time as it is left at the address of or handed to a representative of the party to be served;

26.2.2. by post on the day (not being a Sunday or public holiday 2 days following the date of posting);

26.2.3. in the case of a facsimile or email or other type of electronic telecommunication on the day following despatch.

26.3. In providing the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was correctly addressed and was posted, or that the facsimile or e-mail or other form of electronic communication was correctly addressed and was despatched and despatch of the transmission was confirmed and (in the case of a facsimile) confirmed as having been sent to the number above with all pages successfully transmitted.

27. Special Provisions

27.1. Subject to clause 7 of the Form of Agreement, in the case of any conflict or inconsistency between these Terms and Conditions and any conditions contained within the Form of Agreement or the Schedules, the latter conditions shall prevail.

28. Entire agreement

28.1. The Agreement together with these Terms and Conditions and any variation made in accordance with Condition 24 sets out the entire agreement between the parties and supersedes any prior agreement whether formal or informal and whether legally within the Agreement.

29. Legal Relationship

29.1. Nothing in this Agreement shall be construed so as to create a partnership or joint venture between the parties or have the effect of making any employee of any one party a servant of any of the other parties. Neither party shall act or describe itself as the agent of the other nor shall it make or represent that it has authority to make any commitments on the other's behalf.

30. Dispute resolution

30.1. The relevant Parties shall in good faith attempt to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement.

30.2. If any such dispute cannot be resolved in accordance with Condition 30.1 the dispute may, by agreement between the relevant parties, be referred to [insert officer] in the case of USTAN, [insert officer] in the case of the Co-funder and to [insert officer] in the case of the Contractor in an attempt to resolve the issue. A Party may bring proceedings in accordance with Condition 31 if the dispute cannot be resolved, and a Party may apply to the court for an interdict whether or not any issue has been escalated under this Condition.

31. Governing Law

31.1. The Agreement is made in Scotland and shall be governed by and interpreted in accordance with Scots Law and shall be subject to the exclusive jurisdiction of the Courts of Scotland. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of USTAN or Co-funders to take proceedings against the Contractor in any other court of competent jurisdiction, nor shall the taking of proceedings in any other court of competent jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

