

Please note:

This contract is being reviewed by the Department of Health and is subject to change

RESEARCH CONTRACT

BETWEEN

SECRETARY OF STATE FOR HEALTH (1)

AND

(2)

Research and Development Division, Department of Health, Skipton House,
30 March, 1999 80 London Road,
London. SE1 6LH.

30 March, 1999

SECTION 1

FORM OF AGREEMENT

The Agreement is made between

THE SECRETARY OF STATE FOR HEALTH of Richmond House, 79 Whitehall, London, SW1A 2NS ("the Authority")

and

("the Contractor")

The Authority and the Contractor being together called "the Parties".

IT IS AGREED THAT:

1. The Contractor will undertake a research project entitled in accordance with the work specified in Section 3, being project application , dated “the Project”.
2. The Authority will pay the Contractor the Approved Cost as set out in Section 4 in respect of undertaking the Project and any assignment of copyright and rights in the nature of copyright in the Material to the Authority on behalf of the Crown made pursuant to Conditions 16 and 17 of Section 2. No payments will be made until the approvals sought pursuant to Condition 12 of Section 2 are obtained unconditionally.
3. This Form of Agreement (Section 1) together with the attached Sections 2 to 5 inclusive are the documents which collectively form “the Agreement” (as defined in Section 2).
4. The contract effected by the signing of this Form of Agreement constitutes the entire agreement between the Parties relating to the subject matter of the contract and supersedes all prior negotiations, representations or understandings.

SIGNED:

For the Authority:

SIGNATURE.....

FULL NAME.....

POSITION HELD.....
ON BEHALF OF THE AUTHORITY

DATE.....

For the Contractor:

SIGNATURE.....

FULL NAME.....

POSITION HELD.....
ON BEHALF OF THE CONTRACTOR

DATE.....

SECTION 2
TERMS AND CONDITIONS

Section 2: Terms and Conditions

1. Definitions and Interpretation
2. Administration and Direction of Research
3. Accounting and Payments
4. Set Off
5. Variation
6. Staff Appointments
7. Publicity
8. Confidentiality
9. Confidentiality of Personal Data
10. Anonymising of Data
11. Rights to Data
12. Ethics
13. Monitoring and Reporting
14. Final Report
15. Intellectual Property Rights
16. Exploitation of Intellectual Property
17. Publication
18. Termination Upon Occurrence of Events
19. Consequences of Termination
20. Equipment
21. Force Majeure

22. Warranties and Representations
23. Indemnity and Insurance
24. Assignability
25. Severability
26. Waiver
27. Corrupt Gifts or Payments
28. Dispute Resolution
29. Notices
30. Relationships
31. Freedom of Information Act 2000
32. Unlawful Discrimination
33. Contracts (Rights of Third Parties) Act 1999
34. Law

Schedule A : Variation to Contract Form

Schedule B : Assignment

CONDITIONS OF AGREEMENT

1. DEFINITIONS AND INTERPRETATION

1.1 As used in this Agreement the following terms and expressions shall have the meaning ascribed to them below:

"Agreement"	means the Agreement concluded between the Parties, consisting of the following Sections: Section 1 : Form of Agreement Section 2 : Terms and Conditions Section 3 : Project Section 4 : Financial Arrangements Section 5 : Key Staff
"Approved Cost"	means the total cost agreed for the Project as set out in Section 4.
"Authority's Representative"	means a person authorised to represent the Authority in respect of this Agreement.
"Background Intellectual Property"	means Intellectual Property owned or controlled by either of the Parties at the date of this Agreement or which shall at any time thereafter become so owned or controlled otherwise than as a result of the Project under this Agreement.
"Confidential Information"	means information that falls within the types of information which has been designated as confidential by either Party or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Goods/Services, developments, trade secrets, Intellectual Property rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and the commercially sensitive information.

"Commencement Date"	means .
"Completion Date"	means .
"Contractor's Representative"	means a person authorised to represent the Contractor in respect of this Agreement.
"Copyright"	has the meaning assigned to it in section 1 of the Copyright, Designs and Patent Act 1988.
"Data"	means information collected and/or used for the purposes of the Research set out in this Agreement which can be processed manually, electronically or by other means.
"Default"	means any breach by a Party to this Agreement of its obligations under this Agreement (including a fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of a Party to this Agreement or its employees, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to another.
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000.
"Insolvency Event"	means where the Contractor passes a resolution, or the court makes an order that: <ul style="list-style-type: none"> a) the Contractor be wound up (otherwise than for the purpose of a bona fide and solvent reconstruction or amalgamation); or

b) a receiver, manager or administrator on behalf of a creditor is appointed in respect of all or part of the business of the Contractor; or

c) circumstances arise which entitle a court or creditor to appoint a receiver, manager or administrator or which entitle the court (otherwise than for the purpose of a solvent and bona fide reconstruction or amalgamation) to make a winding up order; or

d) the Contractor ceases to trade or is unable to pay its debts within the meaning of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction.

"Intellectual Property"

means patents, trade marks, service marks, copyrights, topography rights, design rights and database rights, (whether or not any of them are registered or registerable and including applications for registration of any of them), trade secrets and rights of confidence, trade or business names and all rights or forms of protection of a similar nature which have an equivalent effect to any of them which may exist anywhere in the world.

"Key Staff"

means the persons named in Section 5.

"Material"

means any report, executive summary, paper, abstract or other document provided by the Contractor under Conditions 1 and 14.

"Personal Data"

means information relating to an individual who can be identified from it.

"Project"

means the Research together with the Results.

"Project Period"

means the period commencing on the Commencement Date and ending on the Completion Date or such later date as may be

agreed between the Parties unless otherwise determined in accordance with the Terms of the Agreement.

"Research" means the scope of work specified in Section 3.

"Results" means any Data or information generated by the Project.

"Variation" means a variation to the Contract executed through the completion of a Variation to Contract Form signed on behalf of the Parties in accordance with Condition 5.

1.2 The interpretation and construction of the Agreement shall be subject to the following provisions:

1.2.1 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;

1.2.2 the headings to Conditions are for ease of reference only and shall not affect the interpretation or construction of the Conditions;

1.2.3 references to Conditions are references to Conditions in the Section of the Agreement in which they appear, unless otherwise stated;

1.2.4 where the context allows, references to male gender include the female gender and the neuter, and the singular includes the plural and vice versa.

2. ADMINISTRATION AND DIRECTION OF RESEARCH

2.1 Research commissioned by the Authority is open and, subject to the provisions of the Agreement, details of Research are normally published.

2.2 The Authority may publish details of the Project for any non-commercial purpose.

2.3 The Contractor shall ensure that each member of staff engaged on the Project undertakes to observe the Conditions of this Agreement and any further or supplementary Agreement entered into between the Parties hereto and that such members of staff are advised of any changes in the scope of the Agreement or the Project.

- 2.4 Notwithstanding the provisions of Condition 18, the Authority may terminate the Agreement if any of the Contractor's Key Staff is not available for the entire period needed to fulfil their part in the Project, subject to prior discussion with the Contractor to first attempt to identify a mutually acceptable replacement.
- 2.5 The objectives of the Project are set out in Section 3. Within such objectives details of the exact programme to be followed and the day-to-day responsibility for carrying out this programme will be under the control of the Contractor, in consultation, as appropriate, with the Authority's Representative.
- 2.6 The Contractor shall ensure full communication takes place between the Parties and such others as may be notified to the Contractor by the Authority and shall advise as required on the Project. In particular the Contractor must notify the Authority and the relevant research ethics committee of any proposed deviation from the agreed protocol or if significant developments occur as a study progresses, whether in relation to the safety of individuals or to scientific direction.
- 2.7 The Authority reserves the right to terminate this Agreement forthwith should the Contractor be unable or unwilling for any reason to continue with the Project or if in the reasonable opinion of the Authority the Contractor is consistently failing to achieve an acceptable standard in relation to the Project in which case no financial compensation shall be payable to the Contractor.

3. ACCOUNTING AND PAYMENTS

- 3.1 The total amount to be paid by the Authority to the Contractor in any financial year shall not exceed the amount detailed in Section 4. Subject to these limits the Contractor is free to administer the funds within the terms of this Agreement without further reference to the Authority.
- 3.2 Payments to third parties remain the responsibility of the Contractor who shall ensure that such payments are made promptly.
- 3.3 During the Project Period, payments will be made by the Authority in accordance with dates and amounts specified in Section 4. The Authority may suspend this payment schedule at any time if in the view of the Authority reasonable progress on the Project has not been maintained, or reports have not been submitted as required under Condition 13.
- 3.4 The Authority may request at any time such evidence as may reasonably be required that the Contractor has used the amounts paid in accordance with Section 4 in connection with the Project. The Contractor shall maintain proper

financial records relating to the Project at all times during the Project Period and for a period of two years after the end of the Project Period.

- 3.5 The Contractor shall not make any change in the total remuneration, conditions of service or numbers of staff engaged on the project which will require a change in the total amount payable, or make material changes to the Research detailed in Section 3, without prior written approval being given by the Authority.
- 3.6 The Contractor grants to the Authority and to any statutory or regulatory auditors of the Authority and to authorised agents the right of reasonable access to (and if necessary to copy) the relevant financial records during normal business hours.
- 3.7 The Contractor shall provide all reasonable assistance at all times during the currency of the Agreement and during the period of two years after termination or expiry of this Agreement for the purposes of allowing the Authority to obtain such information as is necessary to fulfil the Authority's obligations to supply information for Parliamentary, Governmental, Judicial or other administrative purposes and/or to carry out an audit of the Contractor's compliance with this Agreement including all activities, performance, security and integrity in connection therewith.
- 3.8 On completion of the Project Period, the final payment in respect of costs properly incurred under the Agreement will be paid by the Authority to the Contractor within 30 (thirty) days, provided that:
 - 3.8.1 the Project has been completed to the satisfaction of the Authority;
 - 3.8.2 the reports required under Conditions 13 and 14 have been submitted by the Contractor; and
 - 3.8.3 agreement has been reached in respect of any items remaining for disposal.
- 3.9 If at any time an overpayment has been made to the Contractor for any reason whatsoever, the amount of such overpayment shall be taken into account in assessing any further payments, or shall be recoverable from the Contractor at the Authority's discretion.

4. SET OFF

- 4.1 If any sum of money shall be due from the Contractor to the Authority or any other Government Department, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this Agreement or any other agreement with the Authority or with any other department, office or agency of the Crown.

5. VARIATION

- 5.1 If at any time it appears likely that any provision of the Agreement, in particular the Project, needs to be varied, the Contractor shall immediately inform the Authority in writing requesting a Variation to the Contract, giving full details of the justification for the request and giving proposals for the Variation to the Contract. Upon receipt of such a request the Authority may:
- a) agree to vary the contract;
 - b) vary the Project in a manner which the Contractor agrees can be carried out within the Project Period and Approved Cost;
 - c) refuse the request and require the continuation of the Project in accordance with the Contract; or
 - d) give notice of termination in accordance with Condition 18.
- 5.2 Any Variation to the Contract shall be set out in a Variation to Contract Form as set out at Schedule A to this Section 2 and signed by both Parties.

6. STAFF APPOINTMENTS

- 6.1 All staff providing services in connection with this Agreement shall be bound by the same terms and conditions of service which are normally applicable to the Contractor's staff. Subject to the compatibility with the Contract, the Contractor shall take into account, as far as possible, the recommendations from Universities UK and the University & College Union on Codes of Practice for the employment of research staff on fixed term contracts.
- 6.2 The Authority has a commitment to equal opportunities which the contractor must adhere to. The Contractor must not discriminate on the grounds of gender, race, disability, sexuality, age or religion. The criteria for shortlisting and appointment to posts funded by the Authority must be based solely on the knowledge, skills, experience and personal qualities which in the view of management are required for the successful discharging of the responsibilities of the post. All posts should be open to part-timers and job-share arrangements unless otherwise stated in the advertisement.
- 6.3 The Contractor will ensure that the terms and conditions of staff employed to provide services in connection with this Contract contain provisions in respect of intellectual property compatible with the terms of this Contract and in particular allow those staff to publish Results of the Project in appropriate research journals.
- 6.4 The Contractor shall ensure that any individuals employed by or having a contract for services with the Contractor relating to this Agreement comply with

the rules and regulations of the NIHR Faculty as set out in the guidance “NIHR Faculty Regulations”.

- 6.5 The Contractor shall inform the Authority immediately of any suspension or termination of such employment.

7. PUBLICITY

- 7.1 During the Project Period, and prior to the publication of the Research Results or Data or of matters arising from such Results or Data in accordance with Condition 17, the Contractor shall not without the prior written consent of the Authority release, or otherwise make available to third parties, information relating to the Agreement or the Project by means of any public statement in particular any press announcement or displays or oral presentations to meetings.
- 7.2 In the event that the Contractor fails to comply with this Condition 7.1 the Authority reserves the right to terminate the Agreement by notice in writing with immediate effect.

8. CONFIDENTIALITY

- 8.1 In respect of any Confidential Information it may receive from the other Party and subject always to the remainder of this Condition 8, the receiving Party undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the disclosing Party's prior written consent provided that:
- a) the receiving Party shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Contract; and
 - b) nothing herein shall be so construed as to prevent either party from using data processing techniques, ideas, know-how and the like gained during the performance of the Contract in the furtherance of its normal business, to the extent that this does not result in a disclosure of confidential information or infringement of any valid Intellectual Property Rights of either Party or the unauthorised processing of any Personal Data.
- 8.2 Condition 8.1 shall not apply to any Confidential Information received by one Party from the other:
- (a) which is or becomes public knowledge (otherwise than by breach of this Condition);

- (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) is independently developed without access to the Confidential Information; or
- (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations pursuant to Condition 31 (Freedom of Information).

8.3 The obligations of each of the Parties contained in Condition 8.1 above shall continue without limit in point of time. In the event that the Contractor fails to comply with this Condition 8.3 the Authority reserves the right to terminate the Agreement by notice in writing with immediate effect.

9. CONFIDENTIALITY OF PERSONAL DATA

- 9.1 The collection, handling and use of Data relating to individuals shall be treated as confidential at all times and in particular:
- a) medical information for research shall be used in accordance with:
 - the Medical Research Council's "Personal Information in Medical Research", as amended from time to time copies of which the Authority has supplied to the contractor and
 - "The NHS Confidentiality Code of Practice", guidelines on the use and protection of patient information, as amended from time to time copies of which the Authority has supplied to the contractor;
 - b) non-medical information shall be used in accordance with such guidance as may be issued from time to time by all relevant professional bodies concerned or in accordance with advice as may from time to time be issued by the Authority.
- 9.2 The Contractor shall at all times be responsible for ensuring that all Data (including Data in any electronic format) is stored securely. The Contractor shall take appropriate measures to ensure the security of such Data and guard against unauthorised access thereto or disclosure thereof or loss or destruction while in its custody.

- 9.3 Personal Data shall not be made available to anyone other than those employed directly on the Project by the Contractor, to the extent that they need access to such information for the performance of their duties.
- 9.4 The Contractor shall fully indemnify and hold harmless the Authority, its employees and agents against all liabilities, losses, costs, charges and expenses incurred as a result of any claims, demands, actions and proceedings made or brought against the Authority by any person in respect of any loss or distress to that person by the loss, unauthorised disclosure of Personal Data or medical records by the Contractor, or any sub-contractor, servant or agent of the Contractor or any person within the control of the Contractor.
- 9.5 The Contractor shall at its own expense conduct any litigation arising from any such claims, demands, actions or proceedings and all the negotiations for the settlement of the same and the Authority hereby agrees to grant the Contractor exclusive control of any such litigation or the negotiations for the settlement of the same.
- 9.6 No information which would lead to the identification of an individual shall be included in any publications without the prior agreement in writing of the individual concerned. No mention shall be made of individual officers of the Authority, nor shall information be included which might lead to their identification, without the prior agreement in writing of the Authority.
- 9.7 The Contractor shall comply with the provisions of the Data Protection Act 1998.

10. ANONYMISING OF DATA

- 10.1 The Authority shall not be entitled to inspect, take or be supplied with copies of any specific basic factual (or "raw") Data obtained in connection with the Project other than in an anonymised form. The Contractor shall ensure that all basic factual Data is anonymised as and when it is obtained and that the key to personal identities of all persons to whom the Data relates is kept in a separate and secure place.

11. RIGHTS TO DATA

- 11.1 Subject to the provisions of Condition 10, the Authority reserves the right to have access to and to use Data compiled during the course of the Research and will respect existing guidance on confidentiality of any Data which it obtains.
- 11.2 The Contractor shall, at the request of the Authority, deposit both qualitative and quantitative Data in a relevant data archive.

12. ETHICS

- 12.1 The Contractor will ensure that Research in any way connected with this Project is conducted in accordance with the Department of Health Guidance “Research Governance Framework For Health and Social Care” and, if relevant, in accordance with the Department of Health guidance "Governance Arrangements for NHS Research Ethics Committees" or such other guidelines as may be issued from time to time by the Department of Health and copies of which are made available to the Contractor.
- 12.2 The Contractor shall comply with all relevant legislation including but not limited to:
- (i) The Medicines for Human Use (Clinical Trials) Regulations (SI2004/1031);
 - (ii) The Human Tissue Act 2004.
- 12.3 The Contractor will submit for review by a Research Ethics Committee recognised by the Authority any Project involving:
- a) NHS patients and users including those treated under agreement with private sector providers;
 - b) individuals identified as potential research participants because of their status as relatives or carers of NHS patients;
 - c) NHS staff – recruited as research participants by virtue of their professional role;
 - d) access to data, organs or other bodily material of past and present individual and identifiable NHS patients;
 - e) fetal material and IVF involving NHS patients;
 - f) the recently dead in NHS premises
 - g) the use of, or potential access to, NHS premises or facilities.
- with a view to obtaining the approval of the Research Ethics Committee to the Project and will inform the Authority’s Representative when such approvals have been given (whether unconditionally or subject to conditions) or withheld.
- 12.4 In the event of any animals being used in research, all requirements of the Animals (Scientific Procedures) Act 1986 must be followed. In addition, the Department of Health’s mission statement and Home Office advice on ethical review process in relation to this Act must be effective and in operation.

13. MONITORING AND REPORTING

- 13.1 Progress of the Project will be reviewed periodically by the Authority's Representative against the specifications detailed in Section 3.
- 13.2 The Contractor shall provide an interim written report on the progress of the Project within seven months of the commencement of the Project Period, and at six-monthly intervals thereafter unless the Project Period is less than sixteen months, in which case an interim report shall be provided within one month of completion of half of the Project Period. The interim report shall be in a form and otherwise in compliance with the guidance notes issued by the Authority's Representative as amended from time to time and shall detail all Data, methods, Results and provisional conclusions together with management information and any other information relating to the Project.
- 13.3 During the Project Period the Contractor shall provide verbal or written reports as required by the Authority on any aspect of the Project.

14 FINAL REPORT

- 14.1 The Contractor shall provide a draft final report on the Project within 14 days of the completion date or date of termination howsoever terminated. The draft final report shall be in a form which is in compliance with the guidance notes issued by the Authority's Representative as amended from time to time or as otherwise required by the Authority's Representative and shall include the Data, methods, Results and final conclusions together with management information and any other information relating to the Project up to the Completion Date
- 14.2 The Contractor shall also provide, in a form to be agreed with the Authority, a draft executive summary of the findings of the Project.
- 14.3 The draft final report shall normally be sent by the Authority's Representative for external peer review. Comments received shall be submitted to the Contractor. The Contractor shall produce a final report and executive summary having regard to those comments and submit the final report and executive summary to the Authority's Representative within four weeks of receiving the reviewers' comments, unless otherwise agreed with the Authority.
- 14.4 If within one year of the end of the Project Period the Contractor has not produced a report which satisfies the Authority, the Authority may prepare and publish such a report.

15. INTELLECTUAL PROPERTY RIGHTS

- 15.1 Intellectual Property Rights other than Background Intellectual Property Rights to all Results of the Project in which rights may arise as part of, incidental to or resulting from the Project shall vest in the Contractor.

15.2 Without prejudice to the provisions of Chapter III of the Copyright Designs and Patents Act 1988, the Contractor hereby grants to the Authority:

15.2.1 a perpetual worldwide, royalty free, non-exclusive and irrevocable licence to use or publish information, Data, Results or conclusions arising from the Project in respect of which the Intellectual Property rights have not been assigned to the Authority pursuant to Condition 17 in any form whether amended or edited for any non-commercial purpose; and

15.2.2 a licence to grant sub-licences of its rights under that licence to any person.

16. EXPLOITATION OF INTELLECTUAL PROPERTY

16.1 The Contractor shall inform the Authority of any Results which are capable of exploitation whether patentable or not.

16.2 The Contractor shall as appropriate devise, publish, implement and maintain procedures for the management of Intellectual Property in the Results and in particular, but without limitation, shall use all reasonable endeavours to ensure that:

- a) the Results of the Project are identified, recorded and carefully distinguished from the outputs of other research;
- b) prior to any publication of the Results of the Project, patentable inventions arising from the Results are identified, duly considered for patentability and, where it is reasonable so to do, patent applications in respect thereof are filed at the British or European Patent Office; and
- c) all such patent applications are diligently prosecuted having regard to all relevant circumstances.

16.3 The Contractor shall permit the Authority to monitor the operation and effectiveness of the Contractor's procedures for the management of Intellectual Property in such a way as the Authority considers reasonably necessary.

16.4 Consistent with the good management of Intellectual Property and the agreement of the Authority, the Contractor shall use all best endeavours to:

- a) promote the dissemination of the Results of the Project; and
- b) where reasonable and practicable, exploit commercially such Results to generate either capital or revenue or both.

16.5 The Contractor may exploit commercially any publications arising from the Project.

- 16.6 If any economic benefit accrues to the Contractor through its entitlement to and obligation to exploit Intellectual Property contained in this Condition or otherwise arising from the results of the Project, the Contractor shall make such payments to the Authority as may in the circumstances be reasonable having regard to the factors set out in Condition 16.7 below. However, the Authority shall receive no such payment when the total economic benefit accruing to the Contractor in respect of the Project is less than £5,000.
- 16.7 In determining the proportion of the income payable to the Authority in accordance with Condition 16.6, regard shall be made to the relative contributions which the Parties have made to the Project and the commercial exploitation of its Results. In considering the relative contributions, regard shall be had:
- a) primarily to the overall financial contributions made by the Authority; and thereafter to
 - b) the effort and skill of the Parties in the creation of the Results; and
 - c) the relative contributions of advice, facilities, provision of opportunities, management and commercial skill and other assistance provided by the Parties.
- 16.8 The Contractor shall keep true and accurate records and books of account containing all information necessary for the calculation of the amounts payable to the Authority under Condition 16. Such records and books of account shall be kept separate and shall be open at all reasonable times during business hours for inspection by the Authority.
- 16.9 If, within three years of its creation, any Intellectual Property in the Results has not been commercially exploited by the Contractor, the Contractor shall if requested by the Authority assign the Intellectual Property Rights in the Results to the Authority.

17. PUBLICATION

- 17.1 The Authority's Representative must be notified prior to any publication (whether in oral, written or other form) in particular any press announcement of the Research, Results or Data or of matters arising from such Results or Data. One draft copy of the proposed publication shall be sent to the Authority's Representative at the same time as submission for publication or at least 28 days before the date intended for publication whichever is earlier.
- 17.2 In the event that the Contractor fails to comply with this Condition 17.1 the Authority reserves the right to terminate the Agreement by notice in writing with immediate effect.

- 17.3 Subject to the provisions of Condition 10 and notwithstanding the provisions of Condition 15 the Authority's Representative may at any time publish the Material for any non-commercial purpose and in conjunction with the Authority's statement on Open Access to research "Statement on DH/NIHR-funded research and UK PubMed Central". Such purposes may include but are not limited to any entry in a register of research findings or an individual issue of or a review article in a monograph series prepared on the Authority's behalf by the Authority's Representative. The timing of any such publication will be subject to consultation with the Contractor and will take account of publication timetables in other peer-reviewed journals and the need to make research findings publicly available as soon as practicable.
- 17.4 The Contractor shall assign all Intellectual Property rights in the Material to which he/she is legally entitled to the Authority on behalf of the Crown, by signing a document in the form shown at the Schedule B to this Section 2 and returning it to the Authority.
- 17.5 The Contractor undertakes to obtain an assignment to the Authority of any intellectual property rights in the Material where such rights are the property of a person or organisation other than the Contractor. The Contractor shall provide the Authority with all appropriate details, including proof that the Contractor has obtained such an assignment and details of the acknowledgements required by owners of the rights assigned.
- 17.6 The Authority will ensure that any Queen's Printer and Controller of HMSO copyright publication arising from the Material carries the following statement:
- "© Queen's Printer and Controller of HMSO 20xx (*year of publication*).
- This work was produced by (*name of author/company*) under the terms of a commissioning contract issued by the Secretary of State for Health".
- 17.7 The Contractor shall provide within 14 days of the Completion Date a draft paper suitable for publication in a peer-reviewed journal and shall ensure that it and any other publication of or resulting from research carried out under this Agreement shall acknowledge the Authority's financial support and carry a disclaimer as the Authority may require or in the absence of direction from the Authority a notice as follows:
- "This report is independent research commissioned by the National Institute for Health Research. The views expressed in this publication are those of the author(s) and not necessarily those of the NHS, the National Institute for Health Research or the Department of Health."

18. TERMINATION UPON OCCURRENCE OF EVENTS

- 18.1 Without prejudice to any other provision of the Agreement, this Agreement may be terminated by either Party giving three months notice in writing to the other. Should the option to terminate be exercised by the Authority, it shall indemnify the Contractor from and against all and any actual loss unavoidably incurred by reason or in consequence of the termination provided that the Contractor takes all immediate and reasonable steps to minimise the loss.
- 18.2 Under Condition 18.1, the Authority will not pay any sum which, when taken together with any sums paid or due or becoming due to the Contractor under this Agreement, will exceed such total sums as would have been payable under this Agreement if the Contractor had fulfilled its obligations under this Agreement.
- 18.3 The Authority may at any time and from time to time by notice in writing terminate this Agreement without liability for any damage, loss or expenses arising as a result of or in connection with such termination if there is a change of control (as defined by section 416 of the Income and Corporation Taxes Act 1988) in Contractor. The Authority shall only be permitted to exercise its rights pursuant to this Condition 18.3 for 6 (six) months after any such change of control and shall not be permitted to exercise such rights where the Authority has agreed in advance in writing to the particular change of control and such change of control takes place as proposed. The Contractor shall notify the Authority within 2 (two) weeks of any change of control taking place.
- 18.4 The Authority may at any time and from time to time by notice in writing terminate this Agreement without liability for any damage, loss or expenses arising as a result of or in connection with such termination if:
- 18.4.1 the approvals sought pursuant to Condition 12 are not given unconditionally within 6 (six) months of the commencement of the Project Period;
 - 18.4.2 the Contractor is subject to an Insolvency Event;
 - 18.4.3 the Contractor is in Default under this Agreement and if:
 - a) the Default is capable of remedy and the Contractor shall have failed to remedy the Default within 30 (thirty) days of written notice being sent to the Contractor specifying the Default and requiring its remedy; or
 - b) the Default is not capable of remedy; or

- 18.4.4 Force Majeure, as defined in Condition 21 exists for more than 6 (six) months;
- 18.4.5 Where any provision of this Agreement (other than as previously specified in the preceding provisions of this Condition 18) expressly entitles the Authority to terminate this Agreement.
- 18.5 Termination of this Agreement by the Authority under the preceding provisions of this Condition 18 shall (at the option of the Authority) terminate this Agreement with immediate effect as from the date of service of the notice of that termination or from the expiry of a period (not exceeding 6 (six) months) specified in that notice.

19. CONSEQUENCES OF TERMINATION

- 19.1 Termination of this Agreement, however caused, shall not:
 - 19.1.1 release the Contractor from any duty or obligation of confidence, in particular as imposed by Conditions 7 – 10 inclusive, which falls on it, its servants, agents, employees or former employees under this Agreement or under the general law governing confidential information;
 - 19.1.2 prejudice or affect any rights, action or remedy which shall have accrued before termination or shall accrue thereafter to any Party.

20. EQUIPMENT

- 20.1 The Contractor shall take all practical steps to purchase all materials and equipment at a fair and reasonable price. The Authority may inspect the original quotations and invoices issued to the Contractor for equipment purchased in connection with the Project and recover any funds provided for the purchase if the Contractor does not provide this documentation on request.
- 20.2 At the end of the Project Period, and after the final presentation of the Results of the Project, all equipment purchased for use on the Project with funds provided by the Authority shall become the property of the Contractor.

21. *FORCE MAJEURE*

- 21.1 In the event that any Party is delayed in the performance of its obligations under this Contract by force majeure, the obligations of the Parties under this Contract shall remain in suspense until the cause thereof has ceased. Force majeure shall include, although not by way of limitation, riots, sabotage, acts of war or piracy, destruction of essential equipment by fire, explosion, storm, flood or earthquake, and delay caused by failure of power supplied or transport facilities or any other

cause beyond the control of the Parties which renders performance of the Contract impossible.

22. WARRANTIES AND REPRESENTATIONS

22.1 The Contractor warrants and represents that:

- 22.1.1 the Contractor has full capacity and authority and all necessary licenses, permits and consents to enter into and perform this Agreement;
- 22.1.2 this Agreement is executed by a duly authorised representative of the Contractor;
- 22.1.3 there are no actions, suits or proceedings pending or, to the Contractor's knowledge, threatened against or affecting the Contractor before any court or administrative body or tribunal that might affect the ability of the Contractor to meet and carry out its obligations under this Agreement;
- 22.1.4 the Project will be carried out by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- 22.1.5 the Contractor will discharge its obligations hereunder with all due skill, care and diligence including, but not limited to, good industry practice and (without limiting the generality of the foregoing) in accordance with its own established internal procedures;
- 22.1.6 the provision of the Project and the Authority's use thereof shall not infringe any Intellectual Property Rights of any third party.

23. INDEMNITY AND INSURANCE

23.1 The Contractor shall indemnify the Authority, their officers, servants and agents fully against any liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of:

- a) any damage to property, real or personal, including any infringement of third party Intellectual Property Rights, patents, Copyright and registered designs;
- b) any injury to persons, including injury resulting in death; and

arising out of or in the course of or in connection with the Project except in so far as such damages or injury shall be due to any act or neglect of the Authority.

- 23.2 The Contractor shall promptly notify the Authority if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of Intellectual Property which might affect the Project.
- 23.3 Without prejudice to Condition 23.1 the Contractor shall throughout the Project Period effect and maintain with a reputable insurance company a policy or policies of insurance covering all matters in respect of which the Contractor has an obligation under this Agreement to indemnify the Authority such policy shall:
- 23.3.1 be in the sum of at least £2,000,000 (two million pounds sterling) in respect of one incident;
- 23.3.2 be in the sum of at least £10,000,000 (ten million pounds sterling) in total except for death or personal injury caused by the negligence of the Contractor.
- 23.4 The Contractor shall produce on demand by the Authority documentary evidence that the insurance policies required by Condition 23.3 are in force.
- 23.5 Should the Contractor fail to obtain or maintain insurance as provided in Condition 23.3 the Authority may itself insure against any risk in respect of which such failure has occurred, charge the cost of such insurance, together with an administration charge equal to 5% of the cost of such insurance, to the Contractor and deduct such charges from any sums due from the Authority to the Contractor under Section 4.

24. ASSIGNABILITY

- 24.1 The Contractor shall not sub-contract, transfer or assign the whole or any part of this Agreement without the prior written consent of the Authority whose consent may be subject to such terms and conditions as the Authority may see fit to impose.
- 24.2 The Contractor shall be responsible for the acts and omissions of his sub-contractors as though they were his own.

25. SEVERABILITY

- 25.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid provisions eliminated.
- 25.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Parties shall immediately commence good faith negotiations to remedy such invalidity.

26. WAIVER

- 26.1 The waiver by the Authority of any right or remedy in respect of any breach of any term or condition or requirement of this Contract shall not prevent the subsequent enforcement thereof and shall not be deemed to be a waiver of any right or remedy in respect of any subsequent breach.

27. CORRUPT GIFTS OR PAYMENTS

- 27.1 The Contractor shall not:

27.1.1 offer or give, or agree to give, to any employee or representative of the Authority any gift or consideration of any kind as an inducement or reward for doing, or refraining from doing or having done or refrained from doing, any act in relation to the obtaining or execution of this or any other Contract with the Authority or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract.

27.1.2 enter into this or any other Contract with the Authority in connection with which commission has been paid by him or on his behalf, or with his knowledge, unless before the Contract is made, particulars of any such commission and the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Authority.

- 27.2 Any breach of this condition, by the Contractor or by anyone acting on his behalf or employed by him, whether with or without his knowledge, or the commission of any offence by the Contractor or by anyone acting for him or employed by him under the Prevention of Corruption Acts 1889 to 1916 in relation to this or any other Contract shall entitle the Authority to terminate the Contract and recover from the Contractor the amount of any loss resulting from such a termination and/or recover from the Contractor the amount or value of such gift, consideration or commission.

28. DISPUTE RESOLUTION

- 28.1 Any dispute, difference or question between the Parties with respect to any matter arising out of or relating to this Agreement shall be resolved by negotiation.
- 28.2 If the matter cannot be resolved through negotiation, the Parties will, at the request of either of them, attempt in good faith to resolve the dispute through an agreed Alternative Dispute Resolution ("ADR") procedure.

28.3 If the matter has not been resolved by an agreed ADR procedure within one month of the initiation of such procedure, the dispute shall be referred to a single arbitrator to be agreed upon by the Parties or in default of agreement within 14 days to be nominated by the President for the time being of the Chartered Institute of Arbitrators in accordance with the Arbitration Act 1996. The arbitration shall take place in London and shall be in accordance with the Arbitration Act 1996 and such arbitration rules as the Parties may agree or, in default of agreement, in accordance with the Rules of the London Court of International Arbitration which Rules are deemed to be incorporated by reference into this Condition.

28.4 The decision of the Arbitrator shall be final and binding on the Parties.

29. NOTICES

29.1 All notices to be given hereunder shall be in writing and may be served either personally at or by registered post to the address of the relevant Party as set out in Section 5, or as it may from time-to-time be notified in writing to the other Party and in the case of postal service shall be deemed to have been given 3 working days after the day on which the notice was posted.

30. RELATIONSHIPS

30.1 This Agreement does not make any Party the employee, agent, partner or legal representative of the other Party for any purpose whatsoever. No Party is granted any right or authority to assume or create any obligation or responsibility, expressed or implied, on behalf of or in the name of the other Party. In fulfilling obligations pursuant to this Agreement the Contractor shall be acting as an independent contractor.

31. FREEDOM OF INFORMATION ACT 2000

31.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Agreement, the Contractor hereby gives his consent for the Authority to publish the Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Agreement, to the general public.

31.2 The Contractor's attention is drawn to the FOIA and the Environmental Information Regulations ("EIRs"). The Department of Health ("DH") has a publication scheme which sets out the type of information publicly available on its website or published

as documents. In addition, the Authority has an obligation to respond to specific requests and may be required to disclose information about or provided by the Contractor. In some cases the Authority may consult the Contractor before deciding whether to disclose information requested under FOIA, but it is not obliged to do so.

If a Contractor considers that any information it provides to the Authority would be subject to an exemption under FOIA or the EIRs it should clearly identify such information and explain why it considers the information exempt. The Authority will consider such explanation. For the avoidance of doubt, notwithstanding the previous sentence, whether or not information will be disclosed shall be at the Authority's sole discretion.

- 31.3 Where the Authority considers that the Contractor or its collaborator, employee, agent or sub-contractor, is holding information that it requires in order to comply with its obligations under FOIA or the EIRs, the Contractor undertakes to (and shall procure that its collaborators, employees, agents and sub-contractors shall) provide access to such information as soon as reasonably practicable, at its own expense and at no charge to the Authority, on the request of the Authority and in any case within five (5) working days.

32. UNLAWFUL DISCRIMINATION

32.1 The Contractor shall not:

- (a) discriminate directly or indirectly or by way of victimisation or harassment against any person on racial grounds within the meaning of the Race Relations Act 1976 (as amended) ("the 1976 Act") contrary to Part II (Discrimination in the Field of Employment) and/or Part III (Discrimination in Other Fields) of the 1976 Act;
- (b) contravene Part IV (Other Unlawful Acts) of the 1976 Act.

32.2 The Contractor shall notify the Authority immediately of any investigation of or proceedings against the Contractor under the 1976 Act and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.

32.3 The Contractor shall indemnify the Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Authority arising out of or in connection with any investigation conducted or any proceedings brought under the 1976 Act due directly or indirectly to any act or omission by the Contractor, its agents, employees or sub-contractors.

32.4 In addition to its obligations under Conditions 32.1 to 32.3 above, the Contractor shall ensure that it complies with all current employment legislation and in particular, does not unlawfully discriminate within the meaning of the Race

Relations Act 1976 (as amended), the Sex Discrimination Act 1975 (as amended) and 1986, the Disability Discrimination Act 1995 (as amended) and 2005, the Equality Act 2006, the Employment Equality (Religion or Belief) Regulations 2003 [SI 2003 No 1660] (as amended), the Employment Equality (Sexual Orientation) Regulations 2003 [SI 2003 No 1661] (as amended), the Employment Equality (Sex Discrimination) Regulations 2005, the Employment Equality (Age) Regulations 2006, or any other relevant legislation relating to discrimination in the employment of employees for the purpose of providing the Project. The Contractor shall take all reasonable steps (at its own expense) to ensure that any employee employed in the provision of the Project does not unlawfully discriminate within the meaning of this Condition 32.4 and shall impose on any sub-contractor obligations substantially similar to those imposed on the Contractor by this Condition 32.4.

32.5 The Contractor shall, and shall use reasonable endeavours to ensure that its employees or agents and/or sub-contractors shall, at all times, act in a way which is compatible with the Convention rights within the meaning of Section 1 of the Human Rights Act 1998.

32.6 Subject to Condition 23, the Contractor agrees to indemnify and keep indemnified the Authority against all loss, costs, proceedings or damages whatsoever arising out of or in connection with any breach by the Contractor of its obligations under Condition 32.5.

33. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

33.1 A person who is not a Party to this Agreement shall have no right to enforce any terms of it which confer a benefit on him.

34. LAW

34.1 This Agreement shall be considered as a Contract made in England and be construed in accordance with English Law.

**SCHEDULE B
ASSIGNMENT**

I hereby assign all intellectual property rights to which I am legally entitled in the Material defined in the contract dated between myself and the Secretary of State for Health to the Secretary of State for Health on behalf of the Crown.

Signed by: Date:

Name in Block Capitals:

Witnessed by: Date:

Name in Block Capitals:

Initialed:

Initialed:

SECTION 3

PROJECT

SECTION 4

FINANCIAL ARRANGEMENTS

PAYMENT SCHEDULE

It is intended that the indicated amounts will be paid by the Authority to the Contractor within 30 days of the dates listed.

Date	Amount (£)
1. 30 September 200X	£
2. 31 December 200X	£
3. 31 March 200X	£
Financial Year 200X/XX sub-total	£
4. 30 June 200X	£
5. 30 September 200X	£
6. 31 December 200X	£
7. 31 March 200X	£
Financial Year 200X/XX sub-total	£
8. 30 June 200X	£
9. 31 August 200X	£
Financial Year 200X/XX sub-total	£
TOTAL	£

SECTION FIVE

KEY STAFF

[The Contractor's representative]

Dr Kay Pattison
Section Head
Research and Development Directorate
Department of Health
Quarry House
Quarry Hill
Leeds
LS2 7UE

[The Authority's representative]