

Collaboration agreement

NCC Technology Pull Through Programme

SAMPLE

THIS AGREEMENT is made on [date]

PARTIES

- (1) **NCC OPERATIONS LIMITED** (company number 07304890) whose registered office is at Feynman Way Central, Bristol and Bath Science Park, Emersons Green, Bristol, BS16 7FS, ("**NCC**") and
- (2) [XYZ] LIMITED (company number _____) whose registered office is at [address] ([XYZ])

(Together the "Parties "and each a "Party")

BACKGROUND

- A NCC specialises in [insert details].
- B [XYZ] specialises in [insert details].
- C The Parties wish to collaborate in a programme of research and development work in relation to [insert details] and share between them certain of their respective costs and expenses subject to and in accordance with the terms and conditions of this Agreement.

THE PARTIES AGREE:

1 Definitions and interpretation

1.1 In this Agreement, the following definitions shall apply unless the context requires otherwise

- Affiliate** means any legal entity, which directly or indirectly is the holding company or a subsidiary of one of the Parties or a subsidiary of any such holding company where subsidiary and holding company shall have the meanings given to those terms by s 1159 of the Companies Act 2006;
- Background IPR** means any and all Intellectual Property Rights acquired by the relevant Party prior to or outside the Project but required for the purposes of the Project or for the proper use of the Foreground IPR which are listed in Schedule 3 as updated from time to time by the Parties;
- Confidential Information** means any Background IPR disclosed by a Party for use in the Project, Foreground IPR and any other information disclosed by one Party to the other for use in the Project or under this Agreement;
- Foreground IPR** means any and all Intellectual Property Rights in or related to outcomes generated or acquired through the performance of the Project, performed by either Party to deliver the Project Content, including but not limited to any documents, processes, formulae, data, drawings, designs, models, trade secrets, know-how, software, inventions, prototypes and/or tools, whether or not protected by intellectual and/or industrial property right; developed specifically for the Project under this Agreement, but in each case excluding any Background IPR;
- Intellectual Property Rights** means all patent rights, design rights, utility models, rights in computer software, database rights, moral rights, copyright, rights in inventions, rights in know-how, confidential information and trade secrets, unfair competition rights, Foreground IPR and Background IPR, in each case whether registered or unregistered and including applications for and renewals or extensions of such rights and any other similar or analogous right or form of protection in any country in the world, together with the right to apply for registration of such rights but shall not, unless otherwise agreed, be deemed to include the trade-marks of either Party;

The Master Schedule setting out the key milestones of the Project, key milestone for each Party (if any), timescales and the resources (whether financial or in kind) contributed to the Project by the Parties, as updated from time to time by the Parties (Schedule 2);

The Project means the programme of joint research and development work as specified in letter "C" of the "BACKGROUND" above and as described in Schedule 1;

1.2 In this Agreement (except where context requires otherwise):

1.2.1 any reference to a 'clause' or to a 'Schedule' is to a clause or to a Schedule of or to this Agreement;

1.2.2 the index and clause headings are included for convenience only and shall not affect the interpretation of this Agreement;

1.2.3 use of the singular includes the plural and vice versa;

1.2.4 any reference to a statute, statutory provision or subordinate legislation ('legislation') shall be construed as referring to:

(a) such legislation as amended and in force from time to time and to any such legislation which (either with or without modification) re-enacts, consolidates or enacts in rewritten form any such legislation; and

(b) any former legislation which it re-enacts, consolidates or enacts in written form provided that in the case of those matters which fall within subclause 1.2.4(a) above, as between the Parties, no such amendment or modification shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any Party unless expressly agreed or otherwise provided herein;

1.2.5 any phrase introduced by the terms 'including', 'include', 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

1.2.6 any reference to any other document is a reference to that other document as amended, varied, supplemented or novated (in each case, other than in breach of the provisions of this Agreement) at any time.

2 Performance of the Project

2.1 Parties intend to co-operate in the Project in accordance with this Agreement and its Schedules.

2.2 Each of the Parties undertakes that, in performance of its obligations hereunder, it will:

2.2.1 co-operate fully and in good faith with the other Party as required for the purposes of the Project;

2.2.2 make available to the other Party any Background IPR and any relevant know-how, data, documentation and other materials or information, which it owns or in which it holds the necessary rights, which is developed as part of the Project or which the other Party may reasonably require properly to carry out its own respective obligations

2.2.3 only allocate staff to the Project who are properly qualified, skilled and experienced in the work to be carried out;

2.2.4 carry out its obligations under the relevant Schedule or as agreed by the Parties in a proper, workmanlike and substantial manner in accordance with good industry practice and use all reasonable commercial endeavours to achieve the milestones set out in the Master Schedule;

2.2.5 perform its obligations in compliance with all applicable laws, regulations and codes of practice;

- 2.2.6 ensure that any of its employees visiting or carrying out duties at the premises of the other Party in connection with the Project comply fully with all safety and security arrangements in force at such premises;
- 2.2.7 not make any commitment to any third party which binds or affects, or purports to bind or affect the other Party unless expressly authorised in the agreed budget or by the other Party. Neither Party has the authority to pledge the credit of, or incur any financial liability or indebtedness on behalf of the other Party;
- 2.3 Save as expressly provided in the Master Schedule, each Party shall bear its own costs of the work carried out in relation to the Project.
- 2.4 The Project shall be carried out at the premises of the NCC at the address above inserted and/or at the premises of [XYZ] at [insert address] and/or at such other premises as the Parties may decide from time to time.
- 2.5 Each Party shall procure that properly qualified representatives of the other Party are permitted reasonable access to any premises in which work on the Project is being carried out and that personnel engaged in work on the Project shall provide all co-operation and data reasonably required by such representatives in relation to the Project.
- 2.6 Parties shall prepare jointly monthly report(s) on the work carried out on the Project and its progress towards the milestones set out in the Master Schedule.

3 Ownership and use of Intellectual Property Rights

- 3.1 This Agreement does not affect the ownership of any Intellectual Property Rights in any Background IPR. The Background IPR will remain the property of the Party that contributes it to the Project (or its licensors). No licence to use any Intellectual Property Rights is granted or implied by this Agreement except the rights expressly set out in this Agreement.
- 3.2 Each Party, to the extent that it is free to do so, grants each of the other Parties a royalty-free, non-exclusive, perpetual, irrevocable, non-sub-licensable and non-transferrable licence to use its Background IPR for the purpose of carrying out the Project and for the purpose of using the Foreground IPR in accordance with this Agreement. Notwithstanding the foregoing, Parties may allow its Affiliates, and any person working for it or any Affiliates, or on its behalf or that of any Affiliates, to use any Party's Background IPR for the purpose of carrying out the Project and for the purpose of using the Foreground IPR in accordance with this Agreement, but for no other purpose.
- 3.3 Ownership of Foreground IPR, regardless of the Party creating the same, shall automatically vest in the NCC who shall be the sole and absolute owner with the exception of copyright in any publications as contemplated in Clause 5 which shall be retained by the Party responsible for creating any such publication.
- 3.4 NCC hereby grants to the other Party a perpetual, irrevocable, non-exclusive, non-transferrable, non-sub-licensable and royalty free licence to use the Foreground IPR for the purpose of carrying out the Project and for research and teaching purposes. Notwithstanding the foregoing, Parties may allow its Affiliates, and any person working for it or any Affiliates, or on its behalf or that of any Affiliates, to use any of the Foreground IPR for the purposes specified in this clause 3.4.
- 3.5 In the event that a Party wishes to commercially exploit the Foreground IPR (and relevant Background IPR), it shall negotiate a further licence with the NCC upon fair and reasonable commercial terms, (which may include payment of appropriate royalties or other payment in return for such licence), that allows it to do so.

4 Confidentiality

- 4.1 Without prejudice to clause 5, none of the Parties will during the Project period disclose to any third party nor use for any purpose, except as expressly permitted by this Agreement, the other Party's Confidential Information.

- 4.2 The receiving Party will not be in breach of any obligation to keep the disclosing Party's information confidential and not to disclose it to any third party to the extent that the Confidential Information:
- 4.2.1 it is or becomes publicly known without any breach of this Agreement or any other undertaking to keep it confidential;
 - 4.2.2 it has been obtained by the receiving Party or any of the receiving Party's Affiliates from a third party in circumstances where the receiving Party has no reason to believe that there has been a breach of an obligation of confidentiality to the other Party;
 - 4.2.3 it has been developed by the receiving Party or any of the Receiving Party' Affiliates without reference to the other Party's Confidential Information; or
 - 4.2.4 is disclosed pursuant to the requirement of any law or regulation (provided, in the case of a disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, none of the exceptions to that Act or those Regulations (as the case may be) applies to the information disclosed) or pursuant to the order of any Court of competent jurisdiction or the requirement of any competent regulatory authority and that, in each case where the law permits, the Party required to make that disclosure has informed the disclosing Party, within a reasonable time after being required to make the disclosure, of the requirement to make the disclosure and the information required to be disclosed; or
 - 4.2.5 it is approved for release in writing by an authorised representative of the Party whose information it is.
- 4.3 The receiving Party will be in breach of any obligation to keep confidential the disclosing Party's Confidential Information or not to disclose it to any third party, by making it available to any of its Affiliates or any person working for or on behalf of it or any of its Affiliates, who needs to know the same in order to exercise the rights granted in clause 3 provided that said persons are subject to confidential obligations no less strict than those provided for herein.
- 4.4 No Party will be in breach of any obligation to keep confidential the disclosing Party's Confidential Information or not to disclose it to any third party by disclosing it to a funding body in accordance with its funding conditions.
- 4.5 If a Party which is subject to the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 receives a request under that Act or those Regulations to disclose any information which, under this Agreement, is the Confidential Information of the other Party, it will notify that other Party and will consult with it promptly before making any disclosure under that Act or those Regulations. That other Party will respond to the Party which received the request within ten (10) days after receiving the notice if that notice requests the other Party to provide information to assist the Party which received the request to determine whether or not an exemption to the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 applies to the information requested under that Act or those Regulations. The other Party may make representations in relation to that request and the proposed response and may request amendments to the proposed response.
- 4.6 None of the Parties will use the other Party's name or the name of any of its personnel provided by the other Party, or the other Party's logo, in any press release or product advertising, or for any other promotional purpose, without first obtaining the other Party's written consent.

5 Publication

- 5.1 If a Party ("Requesting Party") wishes publish an abstract, article or paper in a journal or electronic repository, or its presentation at a conference or seminar ("Document") containing the Foreground IPR and the Background IPR owned by the other Party ("Owning Party"), it will submit to the Owning Party, in writing, details of Foreground IPR, and of Background IPR ("Notice of Publication") which that Party intends to publish, at least ninety (90) days before the date of the proposed submission for publication. The Owning Party, at its own discretion, within ninety (90) days from the receipt of the Notice of Publication may, by giving a written notice to Requesting Party ("Confidentiality Notice"):

- 5.1.1 require the Requesting Party to delay the proposed publication of the Document for a maximum of twelve (12) months after receipt of the Confidentiality Notice if, in its opinion, that delay is necessary in order to seek patent or other protection for any of the Intellectual Property Rights contained in the proposed Document; or
 - 5.1.2 amend the proposed Document; or
 - 5.1.3 prevent the publication totally or partially by removing its Confidential Information which cannot be protected by patent or other Intellectual Property Rights registration or which can be protected in that way but which the Owning Party has chosen not to protect in that way; or
 - 5.1.4 allow the Requesting Party to publish the Document.
- 5.2 For the avoidance of doubt and subject to a Party's rights in the Foreground IPR or Background IPR, copyright in any Document cleared for publication in accordance with this clause 5 shall remain with the Party creating the relevant publication.

6. Warranty and indemnity

- 6.1 None of the Parties makes any representation or gives any warranty to any of the other Parties that any advice or information given by it or any of its employees or students who work on the Project, or the content or use of any Background IPR or Foreground IPR or materials, works or information provided in connection with the Project, will not constitute or result in any infringement of third party rights. Notwithstanding the foregoing, neither the Party shall supply Background IPR under this Agreement in the knowledge that the use of it by the other Party will infringe the proprietary rights of any third parties.
- 6.2 Subject to clause 6.5, none of the Parties accepts any liability or responsibility for any use which may be made by any other Party of any of the Intellectual Property Rights, nor for any reliance which may be placed by any other Party on any of the Intellectual Property Rights nor for advice or information given in connection with any of the Intellectual Property Rights.
- 6.3 Subject to clause 6.5, the liability of each Party to all of the other Parties for any breach of this Agreement, any negligence or arising in any other way out of the subject matter of this Agreement, the Project and the Intellectual Property Rights, will not extend to:
- any indirect damages or losses; or
 - any loss of profits, loss of revenue, loss of data, loss of contracts or opportunity, whether direct or indirect,
- even, in each case, if the Party bringing the claim has advised the other of the possibility of those losses, or even if they were within the other Party's contemplation.
- 6.4 Subject to clause 6.5, the aggregate liability of each Party to all of the other Parties for any or all breaches of this Agreement, any negligence, or arising in any other way out of the subject matter of this Agreement, the Project and Foreground IPR will not exceed in total 50% of the total amount contributed to the Project by the Parties.
- 6.5 Nothing in this Agreement limits or excludes any Party's liability for:
- death or personal injury caused by negligence;
 - any fraud or for any sort of liability which, by law, cannot be limited or excluded.
- 6.6 The express undertakings and warranties given by the Parties in this Agreement are in lieu of all other warranties, conditions, terms, undertakings and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing or in any other way. All of these are excluded to the fullest extent permitted by law.

7 Term and termination

- 7.1 This Agreement shall come into effect on the date hereof and, unless previously terminated in accordance with the provisions of this clause, shall continue in effect until the end of the Project as agreed by the Parties.
- 7.2 Either Party shall be entitled to terminate this Agreement with immediate effect by giving written notice of termination to the other if the other is in breach of any of its obligations under this Agreement and, if the breach is capable of remedy, it has continued without being remedied for not less than twenty-eight (28) days after the relevant Party has given notice to the other specifying the breach and the steps required to remedy it.
- 7.3 Either Party shall further have the right to terminate this Agreement with immediate effect by giving written notice of termination to the other if the other shall:
- 7.3.1 have a receiver or an administrative receiver (or the equivalent in the relevant jurisdiction) appointed over it or over any part of its undertaking or assets;
 - 7.3.2 pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect;
 - 7.3.3 become subject to an administration order (or the equivalent in the relevant jurisdiction);
 - 7.3.4 enter into any voluntary arrangement with its creditors (or the equivalent in the relevant jurisdiction); or
 - 7.3.5 cease or threaten to cease carrying on business; or
 - 7.3.6 fail or become unable to pay its debts as they fall due.
- 7.4 Either Party may terminate this Agreement at any time by giving not less than sixty (60) day notice of termination in writing.

8 Consequences of termination

- 8.1 Termination of this Agreement for whatever reason shall not affect the accrued rights of either Party arising out of this Agreement as at the date of termination and shall not affect the coming into force or continuation in force of any clause of this Agreement which is expressly or by implication intended to come into or continue in force following such termination including, without limitation, clauses 3, 4, 5 and 6.
- 8.2 Upon termination of this Agreement for any reason:
- 8.2.1 The Project (if it has not already been completed) shall be terminated forthwith and the Parties shall co-operate in good faith to wind down the Project in an orderly and reasonable manner.
 - 8.2.2 The rights of a Party to use the Foreground IPR and licenses of the Background IPR set out in clause 3 shall remain in full force and effect.

9 Transfer and assignment

None of the Parties may assign its rights or obligations under this Agreement without the prior written consent of each of the other Parties.

10 Relationship

This Agreement relates to the single Project to which it refers. Nothing in this Agreement shall constitute, or be deemed to constitute a partnership between the Parties nor, except as expressly provided, shall it constitute, or be deemed to constitute, either Party the agent of the other party for any purpose.

11 Amendment

No amendments to this Agreement shall be effective unless agreed in writing between the Parties.

12 Severance

Each provision of this Agreement shall be deemed to be separate and severable from the others of them. If any provisions of this Agreement are determined to be invalid or unenforceable in any jurisdiction, such determination and the consequential severance (if any) shall not invalidate the rest of this Agreement, which shall remain in full force and effect as if such provision had not been made a part thereof, nor shall it affect the validity or enforceability of such provision in any other jurisdiction.

13 Notices

13.1 Any notice which term shall include any other communication under or in connection with this Agreement (a 'Notice');

13.1.1 shall be in writing in the English language; and

13.1.2 may be delivered personally or sent by first class post, pre-paid recorded delivery or by fax to the Party due to receive the Notice at the following addresses or to another address, person or fax number specified by that Party by not fewer than five days' written notice to the other Party.

The address in the case of NCC:

Address: Feynman Way Central, Bristol and Bath Science Park, Emersons Green, Bristol, BS16 7FS

For the attention of: *[insert title of the person(s) that are entitled to receive the notices]*

The address in the case of [XYZ]:

Address: *[insert address]*

For the attention of: *[insert title of the person(s) that are entitled to receive the notices]*

13.2 A Notice given under this clause 13 shall conclusively be deemed to have been received 48 hours from the time of posting.

14 Contracts (Rights of Third Parties) Act 1999

This Agreement does not create any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

15 Waivers

15.1 No waiver of any provision of this Agreement nor consent to any departure therefrom by any of the Parties shall be effective unless the same is in writing and then such waiver or consent shall be effective only in the specific instance and for the purpose for which it is given.

15.2 No default or delay on the part of any of the Parties in exercising any rights, powers or privileges under this Agreement shall operate as a waiver of any other right hereunder. A single or partial exercise shall not preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

16 Applicable law and jurisdiction

This Agreement shall be governed by and construed in accordance with the laws in force in England and Wales from time to time and all matters in dispute between the Parties arising out or in connection with this Agreement shall be referred to the exclusive jurisdiction of the English Courts.

17 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts taken together when all signed, constitute one agreement. A Party may execute this Agreement by signing any counterpart.

SCHEDULE 1
THE PROJECT

[INSERT DETAILS OF PROJECT CONTENT]

SAMPLE

SCHEDULE 2
MASTER SCHEDULE

Insert:

[key milestones of the Project],

[key milestone for each Party (if any)]

[execution time]

[resources (whether financial or in kind) contributed to the Project by the Parties]

SAMPLE

SCHEDULE 3

[Insert list of Background IPR for each Party]

SAMPLE

Attestation and Signature

AGREED by the parties through their duly authorised representatives [*on the Commencement Date written on the first page of this Agreement*].

Execution

Signed by [*insert full name of director or authorised signatory*]

for and on behalf of [Director OR Authorised signatory]

NCC OPERATIONS LIMITED

and

Signed by [*insert full name of director or authorised signatory*]

for and on behalf of [Director OR Authorised signatory]

[XYZ]

