

DATED 11th January 2017

**(1) THE UNIVERSITY OF SHEFFIELD**

- and -

**(2) THE UNIVERSITY OF PARDUBICE**

**AGREEMENT**

relating to

**COLLABORATION AGREEMENT**

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SCHEDULE 1 - Scope of the Project

SCHEDULE 2 - Main Contract

**THIS AGREEMENT** is made on

2017

**BETWEEN**

- (1) **THE UNIVERSITY OF SHEFFIELD** incorporated by Royal Charter (company number RC000667) whose address is Western Bank, Sheffield S10 2TN ("**SHEFFIELD**"); and
- (2) **THE UNIVERSITY OF PARDUBICE**, public higher education institution established by law, represented by Rector, Prof. Miroslav Ludwig, whose address is University of Pardubice, Studentska 95, 532 10 Pardubice, Czech Republic, Identification Number: 00216275, VAT Number: CZ00216275 ("**PARDUBICE**")

(each a "party" and together the "parties")

#### **BACKGROUND**

- A. The parties together made an application to the Sponsor and an award was made to SHEFFIELD. The parties collaborated in the carrying out of research work relating to the Feasibility Phase of the Project, as defined below, pursuant to a Collaboration Agreement dated 14 August 2015 ("Collaboration Agreement").
- B. A further award has now been made to SHEFFIELD by way of a Variation to the Main Contract for the Demonstrator Phase of the Project, as defined below, and the parties now wish to further collaborate in the carrying out of research work relating to the Demonstrator Phase.
- C. The parties wish to enter into this Agreement to regulate the relations between them and define the scope of the Project and the basis for exploitation of any anticipated Deliverables.

**IT IS HEREBY AGREED** as follows:

#### **1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement (unless the context otherwise requires), the following words and phrases shall have the following meanings:

"**Affiliate**" means in relation to a party, any entity or person which controls, is controlled by or is under common control with that party. For the purposes of this definition, "control" shall mean direct or indirect beneficial ownership of 50% or more of the share capital, stock or other participating interest carrying the right to vote or to distribution of profits of that entity or person, as the case may be.

**"Agreement"** means this agreement and any document referred to, completed or to be completed in accordance with its provisions (save for the Main Contract, which will be deemed part of the Agreement as the context of the Agreement and the terms of the Main Contract shall allow).

**"Background Intellectual Property"** means the Intellectual Property existing before the Commencement Date or the Intellectual Property, other than the Foreground Intellectual Property, used in or disclosed in connection with the performance of the Project.

**"Collaboration Agreement"** means the Agreement between the parties dated 14 August 2015 relating to the Feasibility Phase of the Project.

**"Commencement Date"** means the commencement date as set out in schedule 1 hereto.

**"Deliverables"** means any results, materials, information or Intellectual Property to be provided under this Agreement.

**"Demonstrator Phase"** means the work to be carried out under this Agreement as set out in schedule 1 hereto.

**"Feasibility Phase"** means the work carried out under the Collaboration Agreement between the parties as set out in schedule 1 of that Agreement.

**"Force Majeure Event"** means any circumstance beyond the reasonable control of the parties including, but not limited to acts of God, fire, explosion, adverse weather conditions, flood, earthquake, terrorism, riot, civil commotion, war, hostilities, strikes, work stoppages, slow-downs or other industrial disputes, accidents, riots or civil disturbances, acts of government, lack of power and delays by suppliers or materials shortages.

**"Foreground Intellectual Property"** means individually and collectively all Intellectual Property which is conceived and/or made by one (1) or more members or other agents of the parties acting either on their own or jointly with one (1) or more employees of another party in the performance of the Project.

**"Intellectual Property" or "Intellectual Property Rights"** includes patents, inventions, know-how, trade secrets and other confidential information, registered designs, copyrights, database rights, design rights, rights affording equivalent protection to copyright, database rights and design rights, semiconductor topography rights, trade marks, service marks, logos, domain names, business names, trade names and all registrations or applications to register any of the aforesaid items, rights in the nature of any of the aforesaid items in any country or jurisdiction, rights in the nature of unfair competition rights and rights to sue for passing-off.

**"Main Contract"** means the contract between SHEFFIELD and the Sponsor(s) governing the Project including the Variation and described in schedule 2 hereto.

**"Project"** means the project set out in schedule 1 hereto.

**"Project Director"** means the project director named in schedule 1 hereto or as agreed by the parties.

**"Sponsor"** means the sponsor of the Project described in schedule 1 hereto.

**"Term"** means the period starting on the Commencement Date and finishing on the Termination Date.

**"Termination Date"** means the termination date as set out in schedule 1 hereto or if no termination date is set out in schedule 1 then the date when the Deliverables are delivered or any other date of termination of this Agreement in accordance with its terms.

**"Variation"** means Variation No. 1 to the Main Contract dated 9 February 2017 and described in schedule 2 hereto.

**"VAT"** means value added tax and includes any substituted or similar tax; and

**"Working Day"** means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory holiday.

1.2 In this Agreement (unless the context otherwise requires):

1.2.1 construction of this Agreement shall ignore the headings, contents list and frontsheet (all of which are for reference only); and

1.2.2 any reference to any legislative provision shall be deemed to include any subsequent re-enactment or amending provision.

## 2. COLLABORATION ON PROJECT

2.1 In consideration of the parties entering into this Agreement, the parties agree to collaborate with each other in the carrying out of the Project in accordance with the terms of this Agreement and the Main Contract. In the event of any conflict between the terms of this Agreement and those of the Main Contract, the terms of the Main Contract shall prevail.

2.2 Each party shall use reasonable endeavours to perform its duties in relation to the Project substantially in accordance with the terms and conditions of this Agreement.

2.3 The parties may agree to amend the Project in writing, such agreement not to be unreasonably withheld or delayed, and subject to the approval of the Sponsor.

## 3. TERM

Unless terminated earlier in accordance with the provisions of this Agreement, this Agreement shall come into force on the Commencement Date and shall continue in force for the Term. The parties may agree to extend the Term subject to the approval of the Sponsor.

#### **4. PROJECT MANAGEMENT**

4.1 The Project Director shall meet with the parties at times and places to be mutually agreed upon to discuss the progress and results as well as ongoing plans or changes to the Project.

4.2 The Project Director's functions shall include:

4.2.1 the co-ordination of the Project and the proper distribution of information between the parties; and

4.2.2 to act as a liaison between the parties and the Sponsor concerning the Project.

#### **5. CONDUCT OF THE PROJECT**

5.1 The parties will co-operate in their common pursuit of the Project.

5.2 Each party will immediately notify the other parties in writing if it becomes aware of an unexpected or scientific problem which (i) makes it impossible to achieve or (ii) is likely to cause a material delay to the achievement of any of the objectives of the Project or any material increase in the costs of the Project or if any party becomes aware of the action of any third party which threatens to affect adversely completion of the Project or the reasonable expectations of either party hereunder.

5.3 Each party shall ensure that the work conducted under the Project is conducted in accordance with generally accepted standards of good practice at the time applicable to such work (including, but without limiting the generality, all relevant statutory safety standards from time to time in force) and each party will be responsible for the implementation of and compliance with all safety and the other legislative requirements which apply to the work assigned to it under the Project.

5.4 Each party will procure that such Background Intellectual Property, facilities, resources, materials and equipment as are reasonably required for the proper execution of the Project are made available by it for the Project. For the avoidance of doubt, nothing in this clause 5 purports to permit either party to reverse engineer or otherwise analyse any of the materials provided to it under



the agreement except in accordance with the provisions of this Agreement and to the extent applicable by law.

## **6. COSTS BILLINGS AND OTHER SUPPORT**

- 6.1 SHEFFIELD will reimburse Pardubice for the actual expenditure that it incurs (up to any maximum budget as set in schedule 3) and in accordance with the terms as set out in schedule 3.
- 6.2 SHEFFIELD shall not be liable for interest payments to any party where it has been unable to make an immediate transfer of monies received from the Sponsor.
- 6.3 Pardubice agrees to provide Sheffield with:
  - 6.3.1 on request, proper documentary proof of such expenditure;
  - 6.3.2 a final statement of expenditure within six (6) weeks of Project termination and a declaration that confirms that expenditure has been incurred in accordance with this Agreement, the Main Agreement and other terms required by the Sponsor.

## **7. PUBLICITY**

No party shall use the name, logo, or trade mark of any of the other parties, its employees or Affiliates in any publicity, advertising or news release without the prior written approval of that party.

## **8. PUBLICATION**

- 8.1 The parties recognise that each party subject to notifying the Sponsor in accordance with Clause 18 of the Main Contract may make reference to or publish information concerning the Project and the Deliverables, in the interests of the exchange of scientific information, in journals, theses, dissertations or other such published material. Before such publication, each party shall be notified with a copy of any proposed publication. Should a party believe that publication should be delayed in order to enable any Intellectual Property Rights arising from the information or the Deliverables to be protected then it shall notify the other parties within thirty (30) days of the date of the notification and the publishing party will refrain from publication in order to enable any such application to be made. All applications will be undertaken expeditiously and the other parties will be notified when the application has been filed, and in any event the publishing party may publish such publication after three (3) months from the date of the notification.



- 8.2 The publishing party shall own all copyrights arising out of any publications first produced in the performance of the Project. The publishing party shall grant to the other parties an irrevocable, royalty-free, non-exclusive licence to reproduce, translate and use all copyrighted material for its own purpose.
- 8.3 No party may include confidential Background Intellectual Property belonging to any of the parties in any publication.
- 8.4 Nothing in this Agreement shall preclude:
- 8.4.1 the inclusion of some or all of the information and results acquired in the course of the Project or the conclusion reached as a result of the Project in a thesis or other material submitted by a student of a party, and
  - 8.4.2 the disclosure of information or conclusions in confidence to any examiner appointed by that party in pursuance of clause 8.4.1, and
  - 8.4.3 the lodging in an academic library of that party of a copy of a thesis or other material in accordance with the regulations of that party with such limitations on availability and access as shall be agreed between the other parties and that party with regard to their respective interests. A student's supervisor shall be notified in writing within twenty-one (21) days of any access restrictions or other special requirements required by a party following disclosure of a manuscript for dissertation or thesis to that party under clause 8.1 above.

## 9. INTELLECTUAL PROPERTY

- 9.1 For the avoidance of doubt all background information and Background Intellectual Property used in connection with the Project shall remain the property of the party introducing the same. No party will make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of any of the background information and/or Background Intellectual Property of the other parties except under the terms of this Agreement. Each party acknowledges and confirms that nothing contained in this Agreement shall give it any right, title or interest in or to the background information and/or Background Intellectual Property of the other parties save as granted by this Agreement.
- 9.2 Each party shall grant to the other parties an irrevocable royalty free licence to use such of its Background Intellectual Property, and any Foreground Intellectual Property belonging to it, as may be necessary to effect the performance of this Agreement.
- 9.3 All rights to Foreground Intellectual Property created by a party in the performance of this Agreement shall belong to Sheffield in accordance with Clause 16.1 of the Main Contract.

## **10. ADDITION OF NEW PARTIES**

New parties may join the Project with the unanimous agreement of all parties and the Sponsor, subject to their being bound by the terms of this Agreement and the Main Contract and such other conditions as the parties may specify.

## **11. WITHDRAWALS**

- 11.1 In the event that key staff from any party withdraw from the Project, the parties will use reasonable endeavours to replace those staff or reallocate their duties in the Project to suitable alternative staff who remain within the Project subject to the consent of the Sponsor.
- 11.2 Any party ("Withdrawing Party") may withdraw from the Project in accordance with this clause 11 of this Agreement and subject to such conditions as the other parties may unanimously decide and subject to the consent of the Sponsor.
- 11.3 In the event of withdrawal of a party the parties will make all reasonable attempts to reallocate the obligations of the Withdrawing Party under this Agreement amongst the remaining parties or to a third party acceptable to the remaining parties and the Sponsor provided that such third party agrees to be bound by the terms of this Agreement and the Main Contract.
- 11.4 The Withdrawing Party shall not be entitled to recover any of its costs incurred in connection with the Project and shall comply with all conditions imposed pursuant to clause 11.2 which shall include (without limitation):
  - 11.4.1 rights granted to the other parties in respect of the Withdrawing Party's Background Intellectual Property which shall continue for the duration of the Project subject to the restrictions contained in this Agreement;
  - 11.4.2 to the extent that exploitation of any other party's Foreground Intellectual Property is dependent on the Withdrawing Party's Background Intellectual Property then the Withdrawing Party shall, subject to any existing third party obligations, grant to the other parties a non-exclusive licence to such Background Intellectual Property on fair and reasonable terms to be agreed or in the event of a dispute according to terms determined by an Arbitrator appointed under the Dispute Resolution procedure as set out in clause 15;
  - 11.4.3 the Withdrawing Party shall grant to the other parties a non-exclusive, royalty-free licence to use the Withdrawing Party's Foreground Intellectual Property for the purposes of carrying out the Project. For the avoidance of doubt any exploitation of such Withdrawing Party's

Foreground Intellectual Property will be dealt with in accordance with this Agreement;

- 11.4.4 all rights acquired by the Withdrawing Party to the Background and Foreground Intellectual Property of the other parties shall cease immediately other than in respect of the Withdrawing Party's interest in any jointly owned Intellectual Property.

## **12. LIABILITY**

- 12.1 Each party undertakes to use reasonable endeavours to ensure that its work on the Project is carried out in accordance with accepted scientific principles and standards but makes no representation or warranty that any Foreground Intellectual Property will be fit for any particular purpose, and accepts no responsibility for any use which may be made of any Foreground Intellectual Property and/or Deliverables arising from its work or otherwise supplied to or to which a party gains access. It is therefore agreed that any party utilising such Foreground Intellectual Property and/or Deliverables is fully responsible and liable for any loss, costs, claims or demands arising from that use.
- 12.2 Except as set out in this clause 12, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, in relation to the carrying out of the Project and the supply of any Deliverables are excluded to the extent permitted by law.
- 12.3 Subject to the provisions in clause 12.5 below, neither party is liable to the other parties in contract, tort (including negligence or breach of statutory duty) or otherwise for any of the following losses or damages, whether direct or indirect, arising out of, or in connection with, the supply, non supply or delay in supplying the Deliverables or otherwise in connection with this Agreement:
- 12.3.1 loss or damage incurred by each party as a result of third party claims;
  - 12.3.2 loss of actual or anticipated profits;
  - 12.3.3 loss of business opportunity;
  - 12.3.4 loss of anticipated savings;
  - 12.3.5 loss of goodwill;
  - 12.3.6 injury to reputation; or
  - 12.3.7 any indirect, special or consequential loss or damage howsoever caused even if that party was advised of the possibility of them in advance.

- 12.4 Subject to clauses 12.2 and 12.5, the entire liability of each party arising out of or in connection with the supply, non supply or delay in supplying the Deliverables, or otherwise in connection with this Agreement, whether in contract, tort (including negligence or breach of statutory duty) or otherwise, is limited to the sums due to it under the Main Contract.
- 12.5 Nothing in this Agreement shall operate to exclude or restrict any party's liability for:
- 12.5.1 death or personal injury resulting from negligence;
  - 12.5.2 breach of the obligations arising from section 12 of the Sale of Goods Act 1979;
  - 12.5.3 fraud or deceit; or
  - 12.5.4 any other matter which may not be excluded or restricted by law.
- 12.6 Subject to clause 12.2 each party will be responsible for its own (and its Affiliates') officers, employees, consultants, agents and representatives ("Staff") and will indemnify the other parties against all claims that may arise out of any injury, loss or damage suffered by such Staff in connection with the breach, performance or non-performance of this Agreement or the use of any Deliverables.
- 12.7 In accordance with Clause 23 of the Main Contract, Pardubice shall indemnify Sheffield against any liability, loss, claim or proceedings made by Sponsor against Sheffield in respect of:
- 12.7.1 any damage to property, real or personal, including any infringement of third party Intellectual Property Rights whether patents, copyright, registered designs or otherwise caused by an act, default or negligence of Pardubice.
  - 12.7.2 arising out of or in the course of or in connection with the Project caused by an act, default or negligence of Pardubice except in so far as such damages or injury shall be due to any act or neglect of the Sheffield or Sponsor.

### **13. TERMINATION**

- 13.1 Upon termination of the Main Contract, SHEFFIELD may terminate this Agreement by written notice to the other Parties.
- 13.2 A party ("Initiating Party") may terminate another party's involvement within the Project with immediate effect by written notice to that party and the other parties on or at any time after the occurrence of any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) in relation to that party ("Breaching Party"):

- 13.2.1 the Breaching Party being in material breach of an obligation under this Agreement and, if the breach is capable of remedy, failing to remedy the breach within ninety (90) days of receipt of written notice from each party other than the Breaching Party giving full details of the breach and requiring the Breaching Party to remedy the breach and stating that a failure to remedy the breach may give rise to termination of this Agreement;
  - 13.2.2 the Breaching Party passing a resolution for its winding up or a court of competent jurisdiction making an order for the Breaching Party to be wound up or dissolved or the Breaching Party being otherwise dissolved;
  - 13.2.3 the appointment of an administrator of or, the making of an administration order in relation to the Breaching Party or the appointment of a receiver or an administrative receiver of, or an encumbrancer taking possession of or selling, the whole or part of the Breaching Party's undertaking, assets, rights or revenue;
  - 13.2.4 the Breaching Party being unable to pay its debts or being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 13.2.5 the Breaching Party entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or takes steps to obtain a moratorium or makes an application to a court of competent jurisdiction for protection from its creditors;
  - 13.2.6 the Breaching Party entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors;
  - 13.2.7 the making of a bankruptcy order against the Breaching Party;
  - 13.2.8 the death of the Breaching Party; or
  - 13.2.9 a change of control of the Breaching Party, where "control" means the ability to direct the affairs of another whether by way of contract, ownership of shares or otherwise.
- 13.3 Upon departure from the Project by the Breaching Party the remaining parties will make all reasonable attempts to reallocate the obligations of the Breaching Party under this Agreement amongst the remaining parties or to a third party acceptable to the remaining parties and the Sponsor provided that such third party agrees to be bound by the terms of this Agreement and the Main Contract. In the event that the obligations of the Breaching Party can not be reallocated to the satisfaction of the parties and the Sponsor then the parties and the Sponsor may agree to terminate the Agreement.



- 13.4 The Breaching Party shall not be entitled to recover any of its costs incurred from the date of breach in connection with the Project and shall comply with the following conditions which shall include (without limitation):
- 13.4.1 rights granted to the other parties in respect of the Breaching Party's Background Intellectual Property which shall continue for the duration of the Project subject to the restrictions contained in this Agreement;
  - 13.4.2 to the extent that exploitation of any other party's Foreground Intellectual Property is dependent on the Breaching Party's Background Intellectual Property then the Breaching Party shall, subject to any existing third party obligations, grant to the other parties a non-exclusive licence to such Background Intellectual Property on fair and reasonable terms to be agreed;
  - 13.4.3 the Breaching Party shall grant to the other parties a non-exclusive, royalty-free licence to use the Breaching Party's Foreground Intellectual Property for the purposes of carrying out the Project. For the avoidance of doubt any exploitation of such Breaching Party's Foreground Intellectual Property will be dealt with in accordance with this Agreement;
  - 13.4.4 all rights acquired by the Breaching Party to the Background and Foreground Intellectual Property of the other parties shall cease immediately other than in respect of the Breaching Party's interest in any jointly owned Intellectual Property.

#### **14. CONSEQUENCES OF TERMINATION**

Upon termination of this Agreement all rights and obligations of the parties shall cease to have effect immediately except that termination shall not affect accrued rights and obligations of the parties under this Agreement at the date of termination or any express obligations in this Agreement of a continuing nature.

#### **15. DISPUTE RESOLUTION**

- 15.1 If any dispute arises between the parties under or in connection with this Agreement either party may serve notice upon the other setting out brief details of the dispute that has arisen ("Notice of Dispute") and the parties shall use their best endeavours to resolve the dispute by good faith negotiations.
- 15.2 If the dispute is not resolved within three (3) months from the date of the Notice of Dispute, then the matter shall be referred to arbitration.

- 15.3 Without prejudice to clause 15.1 above, any dispute arising out of or in connection with this Agreement which cannot be resolved within three (3) months from the date of the Notice of Dispute, shall be finally resolved by arbitration in accordance with the provisions of the Arbitration Act 1996 and conducted pursuant to the rules of the Chartered Institute of Arbitrators at present in force and subject to English law.
- 15.4 The parties acknowledge and agree that:
- 15.4.1 the tribunal shall consist of a single arbitrator;
  - 15.4.2 the arbitrator shall be appointed by the parties jointly or (failing agreement within five (5) further Working Days) to be selected and appointed by the President for the time being of the Chartered Institute for Arbitrators;
  - 15.4.3 any right of application or appeal to court concerning any question of law arising in the course of the arbitration shall be excluded insofar as the law allows; and
  - 15.4.4 the place of the arbitration shall be London and all submissions and awards shall be made in English.

## 16. CONFIDENTIALITY

- 16.1 In this clause 16, "Confidential Information" means all confidential information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a party ("Disclosing Party") to another party ("Receiving Party") including, but not limited to, information relating to the Disclosing Party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs.
- 16.2 During the Term of this Agreement and after termination or expiry of this Agreement for any reason the Receiving Party:
- 16.2.1 shall not use Confidential Information for a purpose other than the performance of its obligations under this Agreement;
  - 16.2.2 shall not disclose Confidential Information to any person except with the prior written consent of the Disclosing Party or in accordance with clauses 16.3 and 16.4;
  - 16.2.3 shall make every effort to prevent the use or disclosure of Confidential Information.
- 16.3 During the term of this Agreement the Receiving Party may disclose Confidential Information to any of its directors, other officers, employees and



sub-contractors ("Recipient") to the extent that disclosure is necessary for the purposes of this Agreement.

16.4 Before disclosure of Confidential Information to a Recipient, the Receiving Party shall ensure that such Recipient is made aware of and is under their own obligation to comply with the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement.

16.5 Clauses 16.2 to 16.4 do not apply to Confidential Information which:

16.5.1 is at the Commencement Date or becomes at any time after that date publicly known other than by the Receiving Party's or Recipient's breach of this Agreement;

16.5.2 can be shown by the Receiving Party to the Disclosing Party's reasonable satisfaction to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party;

16.5.3 is or becomes available to the Receiving Party otherwise than pursuant to this Agreement and free of any restrictions as to its use or disclosure;

16.5.4 is required to be disclosed by law.

## **17. FREEDOM OF INFORMATION**

Nothing in this Agreement shall be interpreted as contravening any of the provisions of the Freedom of Information Act 2000 to which Sheffield is subject and Pardubice acknowledges and accepts that Sheffield is subject to the same.

Sheffield acknowledge that Pardubice is subject to the Act of Registry of Contracts 340/2015 and the Freedom of Information Act 106/1999 in accordance with the law of the Czech Republic and nothing in this Agreement shall be interpreted as contravening any of the provisions of those Acts.

## **18. BRIBERY**

The Parties shall comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and neither Party shall give, provide or offer to the other Party any loan, fee, reward, gift (except items of negligible or intrinsic value), or any emolument or advantage whatsoever to the other Party. Non-compliance or suspected non-compliance shall constitute a material breach of this Agreement and this Agreement may be terminated by the non-breaching Party with immediate effect without prejudice to any other rights the non-breaching Party may possess.

## **19. FORCE MAJEURE**

19.1 If a party ("Affected Party") is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event:

19.1.1 the Affected Party's obligations under this Agreement are suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed;

19.1.2 as soon as reasonably possible after the start of the Force Majeure Event, the Affected Party shall notify the other parties ("Non-Affected Parties") in writing of the Force Majeure Event, the date on which the Force Majeure Event started and the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement;

19.1.3 the Affected Party shall make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement; and

19.1.4 as soon as reasonably possible after the end of the Force Majeure Event, the Affected Party shall notify the other [party][parties] in writing that the Force Majeure Event has ended and resume performance of its obligations under this Agreement.

19.2 If the Force Majeure Event continues for more than three (3) months starting on the day the Force Majeure Event starts, the Non-Affected Parties may terminate this Agreement by giving not less than thirty (30) days' notice in writing to the other parties.

19.3 For the avoidance of doubt, nothing shall excuse the parties from any payment obligations under this Agreement.

## **20. ASSIGNMENT AND SUB-CONTRACTING**

None of the parties may sub-contract the performance of any of its obligations or assign or deal in any way with all or any part of the benefit of, or its rights or obligations under, this Agreement without the prior written consent of the other parties (which consent shall not be unreasonably withheld or delayed). For the avoidance of doubt, Fusion IP acting on behalf of SHEFFIELD, shall not be considered to be a sub-contractor in relation to SHEFFIELD's exploitation obligations. The sub-contracting party shall be responsible for all acts and omissions of its sub- contractors as if they were its own.

## **21. NOTICES**

Any notice given by one (1) party to another under this Agreement must be in writing and may be delivered personally or by pre-paid first class post and in the case of post will be deemed to have been given two (2) Working Days after the date of posting. Notices shall be delivered or sent to the addresses of the parties as referenced in Schedule 1 or to any other address notified in writing by one party to the other for the purpose of receiving notices after the date of this Agreement.

## **22. SEVERANCE**

If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

## **23. THIRD PARTIES**

A person who is not party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause 23 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## **24. NO PARTNERSHIP OR AGENCY**

- 24.1 In the performance of its obligations hereunder Sheffield shall be deemed to be an independent contractor.
- 24.2 Nothing in this Agreement is intended to create a partnership or joint venture or legal relationship of any kind that would impose liability upon one (1) party for the act or failure to act of any other party, or to authorise any party to act as agent for any other. Save where expressly stated in this Agreement, no party shall have authority to make representations, act in the name or on behalf of or otherwise to bind any other.

## **25. WAIVER**

No forbearance or delay by any party in enforcing its rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or any later breach.

## **26. VARIATION**

No variation of this Agreement or any of the documents in the agreed form referred to in it shall be valid unless it is in writing signed by or on behalf of each of the parties to this Agreement.

## **27. ENTIRE AGREEMENT**

27.1 This Agreement, together with the documents referred to in it, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in them and supersedes any previous agreement between the parties relating to such matters.

27.2 Each of the parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to any party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.

27.3 Nothing in this clause 27 shall operate to exclude any liability for fraud.

27.4 The provisions of this Agreement shall take precedence over any conflicting terms in any subsequent purchase order terms and conditions.

## **28. GOVERNING LAW AND JURISDICTION**

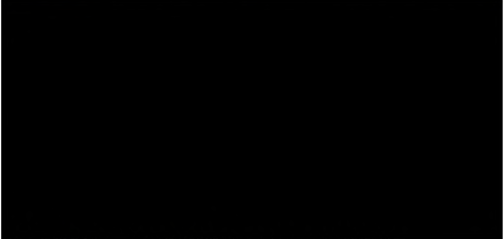

28.1 This Agreement and any matter arising from or in connection with it shall be governed by and construed in accordance with English law.



28.2 Each party irrevocably agrees to submit to the non-exclusive jurisdiction of the English courts over any claim or matter arising from or in connection with this Agreement.

## **29. GENERAL**

This Agreement may be executed in any number of counterparts, each of which when executed (and delivered or transmitted by electronic means), will constitute one original, and photocopy, electronic or other copies shall have the same effect for all purposes as an ink-signed original. Each party hereto consents to be bound by photocopy signatures of such party's representative hereto. No counterpart will be effective until each party has executed at least one counterpart.

IN WITNESS whereof the parties have executed this Agreement the day and year first above written.

<p>Signed by the Authorised representative</p> <p>for and on behalf of The University of Sheffield:</p> <p>Name:</p> <p>Title:</p> <p>Date: 11 JAN 2018</p>	  <p>Research Development Research and Innovation Services University of Sheffield</p>
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<p>Signed by prof. Miroslav Ludwig, rector</p> <p>for and on behalf of The University of Pardubice</p> <p>Name:</p> <p>Title:</p> <p>Date: 03. 01. 2018</p>	 
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## SCHEDULE 1

### Scope of the Project

PROJECT TITLE	Predictable and Optimised Braking; Control of Wheel/Rail interface Conditions using Dry-Ice Blasting
MAIN CONTRACT/SPONSOR(S)	Rail Safety and Strategy Board
PROJECT	As fully described in Section 3 of the Main Contract as amended by Variation No. 1 dated 9 February 2017.
COMMENCEMENT DATE	1 April 2017
TERMINATION DATE	30 <sup>th</sup> September 2018
PROJECT DIRECTOR	[REDACTED]
ADDRESSES FOR NOTICES	<p>For Sheffield: Director of Research &amp; Innovation Services R&amp;IS New Spring House 231 Glossop Road Sheffield, UK S10 2GW</p> <p>For PARDUBICE: [REDACTED] University of Pardubice, Faculty of Transport Engineering, Educational and Research Centre in Transport, Studentska 95, 532 10 Pardubice, Czech Republic</p>

**SCHEDULE 2**

*Main Contract between SHEFFIELD and the Sponsor governing the Project and  
Variation No. 1 to the Main Contract dated 9 February 2017*

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SCHEDULE 3 – Payment terms.

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]