



PREFORMA PCP Framework Agreement

PREFORMA PCP

AGREEMENT

BETWEEN

AUTHORITY (1)

AND

CONTRACTOR (2)

SECTION 1 FORM OF AGREEMENT

This Agreement is made between

(1) [] (the "Authority"); and

(2) [] ("the Contractor")

the Authority and the Contractor being together called "the Parties" and individually a "Party".

IT IS AGREED as follows:

1. The Contractor will provide innovation and development services within a project entitled Preforma in accordance with the specification as detailed in the Invitation to Tender and the Challenge Brief.

The Project is divided into three separate phases ("Phase 1", "Phase 2", and "Phase 3") comprising, respectively and in that order: Design, prototyping, and testing as further described in the Invitation to Tender.

This Agreement covers all three Phases but will become effective by the signing of the Parties only with regard to Phase 1. Subject to the subsequent calls for bids for Phase 2 and Phase 3, respectively, and the Authority's award of separate contracts for each of those Phases (as accounted for below), the Agreement will become effective also for Phase 2 and, where applicable, for Phase 3 with regard to contractors awarded such contracts.

2. The Authority will pay the Contractor, the Price for Phase 1 and, where applicable, the Price for Phase 2 and the Price for Phase 3 subject to the Authority's award of contracts for one or both of these Phases 2 and 3 from the Contractor:

2.1 for undertaking the Project; and

all such payments being subject to the Conditions of the Agreement.

3. This Form of Agreement (Section 1) together with the attached Sections 2 to 6 inclusive are the documents which collectively form "the Agreement". If there is any inconsistency between Sections 3 to 6 of the Agreement and this Section 1 or the Terms and Conditions set out in Section 2, the provisions of Section 1 and 2 shall prevail.
4. The Agreement effected by the signing of this Form of Agreement constitutes the whole agreement between the Parties and supersedes all prior negotiations, agreements, representations or understandings between them relating to the subject matter of this Agreement.

5. Each Party acknowledges that, in entering into the Agreement, it does not rely on any statement, representation, assurance or warranty ("**Representation**") of any person (whether a Party to this Agreement or not) other than as expressly set out in the Agreement. Each Party agrees that the only remedies available to it arising out of or in connection with a Representation shall be for breach of contract.
6. Nothing in this Agreement shall limit or exclude any liability for fraud.
7. The Agreement becomes effective upon signing by all Parties and shall remain in effect until the Completion Date (as defined below) of the last Phase that has been awarded the Contractor.
8. The Contractor shall defend, indemnify and hold harmless the Authority and its Related Parties in the Consortium from and against any and all Third Party claims and liabilities regardless of the form of action, arising out of or in connection with a claim that the Licensed Software to be developed in this project, infringes, violates or misappropriates a valid third party patent, copyright or intellectual property right.

Signed by the duly authorised
signatory of the Authority:

.....
..... Signature

.....
..... Full Name

.....
..... Position Held

.....
..... Date

Signed by the duly authorised
signatory of the Contractor:

.....
..... Signature

.....
..... Full Name

.....
..... Position Held

.....
..... Date

SECTION 2 TERMS AND CONDITIONS

1. Phase 1, Phase 2, and Phase 3 of the Project

1.1 By the signing of the Parties of this Agreement, the Authority assigns to the Contractor the task of performing the Services within the scope of Phase 1 of the Project (design). The Authority has simultaneously entered into corresponding framework contracts for the Project with the other contractors.

1.2 Upon completion of Phase 1, the Authority will, based on the End of Phase Report for Phase 1, submitted by the Contractor within 14 days of the end of Phase 1, make a call for bids among those that successfully completed Phase 1 to perform the Services within the scope of Phase 2. Successful completion of a phase is assessed on the basis of the End of Phase Report in terms of satisfactory completion time and quality of the work. The assessment of successful completion of a phase is carried out by the authority representative. The criteria and the method for evaluating those bids will essentially be based on the criteria and the method used in evaluating the original tenders as set out in the Invitation to Tender, but may be elaborated or developed in further detail within those frames. If possible, three to five (3-5) contractors will be awarded contracts for Phase 2.

If the Contractor is awarded contract also for Phase 2, this Agreement shall continue in effect for the duration of that Phase and shall apply to that Phase as well. In addition, a separate contract for Phase 2, having the format set out in Section 5, shall be signed by the Authority and the Contractor upon the award.

If the Contractor is not awarded contract for Phase 2, this Agreement shall not have any effect with regard to Phase 2 or Phase 3 but shall expire upon the date announced by the Authority for final award of Phase 2.

1.3 If the Contractor is awarded contract for Phase 2, the following shall apply with regard to Phase 3.

Upon completion of Phase 2, the Authority will, based on the End of Phase Report for Phase 2, submitted by the Contractor within 14 days of the end of Phase 2, make a call for bids among those that successfully completed Phase 2 to perform the Services within the scope of Phase 3. Successful completion of a phase is assessed on the basis of the End of Phase Report in terms of satisfactory completion time and quality of the work. The assessment of successful completion of a phase is carried out by the authority representative

The criteria and the method for evaluating those bids will essentially be based on the criteria and the method used in evaluating the original tenders as set out in the Invitation to Tender and the subsequent call for bids for Phase 2, but may be elaborated or developed in further detail within those frames. If possible, two (2) contractors among those awarded contracts for Phase 2 will be awarded contracts for Phase 3.

If the Contractor is awarded contract also for Phase 3, this Agreement shall continue in effect for the duration of that Phase and shall apply to that Phase as well. In addition, a separate contract for Phase 3, having the format set out in Section 6, shall be signed by the Authority and the Contractor upon the award.

If the Contractor is not awarded contract for Phase 3, this Agreement shall not have any effect with regard to Phase 3 but shall expire upon the date announced by the Authority for final award of Phase 3.

- 1.4 Any award of continued assignment for the subsequent Phases (2 and 3) will be communicated in writing by the Authority to the Contractor.
- 1.5 Assessment of the preceding phase does not in any way prejudice the assessment of bids for the next phase.
- 1.6 An award of continued assignment shall become binding upon the Authority only after a stand-still period of ten (10) days commencing on the day after it was communicated in writing according to Clause 1.4. Should any award be contested within that period, the final award is subject to and conditioned upon the outcome of such contest.
- 1.7 Any reference in this Agreement to the Project refers also to each of the Phases awarded to the Contractor.

2. Administration and Direction of the Project

- 2.1 The Contractor shall ensure that each member of the Contractor's Staff engaged on the Project observes the Conditions of this Agreement and any Variation entered into between the Parties hereto and that the Contractor's Staff are advised of any consequent changes in the scope of the Agreement or the Project.
- 2.2 Notwithstanding the provisions of Clause 19, the Authority may terminate the Agreement if any of the Contractor's Key Staff are not available for the entire period needed to fulfil their duties in the Project, subject to prior discussion having first been held with the Contractor to attempt to identify and agree a mutually acceptable replacement and where the lack of availability of one or more of the Key Staff causes a material risk to the fulfilment of the delivery objective of the Project.
- 2.3 The objectives of the Project (and each separate Phase within it) are set out in the Invitation to Tender and the Challenge Brief. 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 with and, where appropriate, monitored by the Authority's Representative.

The Contractor shall ensure that 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 Evaluation Committee of any proposed deviation from the agreed protocol or if significant developments occur as the research and development work progresses,

whether in relation to the safety of individuals or to scientific direction.

- 2.4 Notwithstanding the provisions of Clause 19, the Authority may terminate the Agreement forthwith should the Contractor be unwilling or unable 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. If this occurs, the Authority shall not be obliged to make any further financial payment to the Contractor.

3. Obligations of the Contractor and the Authority

- 3.1 The Contractor shall manage and complete the Project in accordance with the tender specification, the Challenge Brief, and the offer concerned and shall allocate sufficient resources to the Project to enable it to comply with this obligation, initially with regard to Phase 1, but subsequently also with regard to Phase 2 and Phase 3 insofar as the Contractor is awarded contracts for such later Phase or Phases.

- 3.2 The Contractor shall meet, with time being of the essence, any performance dates specified in the Invitation to Tender or elsewhere in the Agreement, including but not limited to End of Phase Reports and related documents. If the Contractor fails to do so, the Authority may, after giving the Contractor not less than 14 days' notice of its intention to do the same, (without prejudice to any other rights it may have):

3.2.1 terminate this Agreement in whole or in part without liability to the Contractor;

3.2.2 refuse to accept any subsequent performance of the Project which the Contractor attempts to make;

3.2.3 hold the Contractor accountable for any loss and additional costs incurred; and

3.2.4 have all sums previously paid by the Authority to the Contractor under this agreement refunded by the Contractor.

- 3.3 The Contractor shall:

3.3.1 co-operate with the Authority in all matters relating to the Project;

3.3.2 subject to the prior written approval of the Authority, appoint or, at the written request of the Authority, replace without delay:

3.3.2.1 the Contractor's Representative who shall have authority under this agreement contractually to bind the Contractor on all matters relating to the Project; and

3.3.2.2 Key Staff or any member of the Contractor's team, who shall be suitably skilled, experienced and qualified to carry out the Project.

3.3.3 subject to clause 3.3.2, ensure that the same person acts as the Contractor's Representative throughout the term of this Project;

3.3.4 procure the availability of the Contractor's Representative and Key Staff for the purposes of the Project;

3.3.5 promptly inform the Authority of the absence of the Contractor's Representative and/or Key Staff. If the Authority so requires, the Contractor shall provide a suitably qualified replacement;

3.3.6 not make any changes to the Contractor's Representative, sub-contractors or the Key Staff without the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed; and

3.3.7 ensure that the Contractor's team uses reasonable skill and care during the Project.

3.4. The Contractor shall:

3.4.1 observe, and ensure that the Contractor's team observe, all rules and regulations and any other reasonable requirements of the Authority;

3.4.2 notify the Authority as soon as it becomes aware of any issues which arise in relation to the Project; and

3.4.3 before the Commencement Date obtain, and at all times maintain all necessary licences and consents and comply with all relevant legislation in relation to the Project.

3.5 The Contractor acknowledges and agrees that the Authority is entering into this agreement on the basis that the details of the Project are accurate and complete in all material respects, and are not misleading.

3.6 The Authority shall:

3.6.1 co-operate with the Contractor in all matters relating to the Project and appoint (and, as it thinks fit, replace) the Authority's Representative in relation to the Project, who shall have the authority contractually to bind the Authority on matters relating to the Project;

3.6.2 provide such access to the Authority's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Contractor and agreed with the Contractor in writing in advance, for the purposes of the Project;

3.6.3 provide such information as the Contractor may reasonably request and the Contractor considers reasonably necessary, in order to carry out the Project, in a timely manner, and ensure that it is accurate in all material respects; and

3.6.4 inform the Contractor of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Authority's premises.

4. Accounting and Payments

The total amount to be paid by the Authority to the Contractor shall not exceed the relevant amounts as detailed in the Invitation To Tender. Subject to these limits the Contractor is free to administer received payments within the terms of this Agreement without further reference to the Authority. In this respect, the terms of this Agreement (see the Invitation to Tender) comprise, without limitation, an obligation to allocate more than 50 per cent of the contract value directly and exclusively to legitimate Research and Development services. Failure on the part of the Contractor to do so will entitle the Authority, without prejudice to any other remedy available to it, to full and unconditional repayment of any amounts paid to the Contractor under the Agreement.

The Contractor accepts, upon request from the Authority, to provide the Authority with complete, relevant and clear information about the allocation of monies paid by the Authority, in order to allow control of the due fulfilment of the applicable requirement that more than 50 per cent of the contract value is attributable directly and exclusively to legitimate Research and Development services.

- 4.1 Payments to third parties employed or hired by the Contractor, if any, shall remain the responsibility of the Contractor who shall ensure that such payments are made promptly.
- 4.2 During the Project Period, payments will be made by the Authority in accordance with dates and amounts specified by the Project Management Team.
- 4.3 The Authority may request at any time such evidence as may reasonably be required that the Contractor has used the amounts paid 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 six years after the end of the Project Period.
- 4.4 The Contractor shall not make any material changes to the work detailed in the Invitation to Tender and the Challenge Brief, or the total amount payable under the Contract, without prior written approval being given by the Authority.
- 4.5 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.
- 4.6 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.

- 4.7 On completion of the Project Period, the final payment under the Agreement will be paid by the Authority to the Contractor within 30 (thirty) days, provided that:
- 4.7.1 the Project has been completed to the reasonable satisfaction of the Authority;
- 4.7.2 the reports required under Conditions 14 and 15 have been submitted by the Contractor and
- 4.7.3 agreement has been reached in respect of any remaining issues needed to be settled.
- 4.8 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 the assessing of any further payments, or shall be recoverable from the Contractor at the Authority's discretion.
- 4.9 The Contractor shall keep and maintain until six years after this Agreement has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Project including:
- 4.9.1 all aspects of the Project;
- 4.9.2 all expenditure paid by the Authority; and
- 4.9.3 all payments made by the Authority,
- 4.9.4 and the Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be required in connection with the Agreement.
- 4.10 Where the Contractor enters into a Sub-Contract with a supplier or contractor for the purpose of performing the Agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Contractor to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 4.11 Wherever, under the Agreement, any sum of money is recoverable from or payable by the Contractor (including any sum that the Contractor is liable to pay to the Authority in respect of any breach of the Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Authority.
- 4.12 The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

5. Set Off

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 State.

6. Variation

- 6.1 If at any time it appears likely that any provision of the Agreement, in particular the Project, needs to be amended, 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 Agreement. Upon receipt of such a request the Authority may:

6.1.1 agree to vary the Agreement;

6.1.2 vary the Project in a manner which the Contractor agrees can be carried out within the Project Period and the Price with regard to the relevant Phases;

6.1.3 refuse the request and require the continuation of the Project in accordance with the Agreement; or

6.1.4 give notice of termination in accordance with Condition 19.

- 6.2 Any Variation to the Agreement shall be set out in a Variation to Agreement Form as set out at Schedule A to this Section 2 and signed by both Parties.

7. Staff Appointments

- 7.1 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.

- 7.2 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 or otherwise allow any applicable employment legislation to be breached.

- 7.3 The Contractor will ensure that the terms and conditions of staff employed or hired to provide services in connection with this Agreement contain provisions in respect of Intellectual Property compatible with the terms of this Agreement.

- 7.4 The Contractor shall ensure that any individuals employed by or having a contract for services with the Contractor relating to this Agreement comply with any of the Authority's rules and regulations in this respect.

8. Publicity

- 8.1 During the Project Period, and prior to the publication of the Results or Data or of matters arising from such Results or Data 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.
- 8.2 In the event that the Contractor fails to comply with Condition 8.1 the Authority reserves the right to terminate the Agreement for Default by notice in writing effecting accordance with Clause 19.4.

9. Confidentiality

- 9.1 In respect of any Confidential Information that it may receive from the other Party and subject always to the remainder of this Clause 9, 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:
- 9.1.1 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 concerned; and
- 9.1.2 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 concerned 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.
- 9.2 Condition 9.1 shall not apply to any Confidential Information received by one Party from the other:
- 9.2.1 which is or becomes public knowledge (otherwise than by breach of this Condition);
- 9.2.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- 9.2.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 9.2.4 is independently developed without access to the Confidential Information as evidenced by receiving Party's written notes; or
- 9.2.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure.

- 9.3 The obligations of each of the Parties contained in Condition 9.1 above shall

continue without limit in point of time. In the event that the Contractor fails to comply with this Condition 9.3 the Authority reserves the right to terminate the Agreement by notice in writing for Default in accordance with Clause 19.4.

- 9.4 Nothing in this Clause 9 shall be deemed to prevent the Authority from disclosing, publishing or otherwise make use of the Project, lessons learnt or related experiences.

10. Confidentiality of Personal Data

- 10.1 The collection, handling and use of Personal Data relating to individuals shall be treated as confidential at all times, save that the Parties shall nevertheless be entitled to disclose Personal Data as required pursuant to a statutory, legal or parliamentary obligation placed upon the Party.
- 10.2 The Contractor shall at all times be responsible for ensuring that all Personal Data (including Personal Data in any electronic format) is stored securely. The Contractor shall take appropriate measures to ensure the security of such Personal Data and guard against unauthorised access thereto or disclosure thereof or loss or destruction while in its custody.
- 10.3 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.
- 10.4 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 arising from the loss, unauthorised disclosure of Personal Data by the Contractor, or any sub-contractor, servant or agent of the Contractor or any person within the control of the Contractor.
- 10.5 Subject to Condition 10.4, 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.
- 10.6 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.
- 10.7 The Contractor shall, at all times, comply with the provisions of the The Personal Data Act 1998.

11. Anonymising of Personal Data

The Authority shall not be entitled to inspect, take or be supplied with

copies of any specific basic factual (or “raw”) Personal Data obtained in connection with the Project other than in an anonymised form. The Contractor shall ensure that all Personal Data is anonymised as and when it is obtained and that the key to personal identities of all persons to whom the Personal Data relates is kept in a separate and secure place.

12. Rights to Data

The Authority reserves the right to have access to and to use Data compiled during the course of the work and will respect existing guidance on confidentiality of any Data which it obtains.

13. Ethics

The Contractor will ensure that work in any way connected with this Project is conducted in accordance with the Authorities’ guidelines as may be issued, or referred to, from time to time by the Authority, copies of which are to be made available to the Contractor as appropriate.

14. Monitoring and Reporting

14.1 Progress of the Project will be reviewed periodically by the Authority’s Representative against the specifications detailed in the Invitation to Tender and the Challenge Brief.

14.2 The Contractor shall provide an interim report when reasonably required to do so by the Authority. 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.

14.3 During the Project Period the Contractor shall provide verbal or written reports as reasonably required by the Authority on any aspect of the Project.

14.4 The Contractor will allow its facilities, procedures and documentation to be submitted for scrutiny by the Authority or its auditors in order to ascertain compliance with the relevant applicable laws and the terms of this Contract.

14.5 The Contractor shall retain and maintain all assets necessary to ensure continued compliance with legislation that may apply from time to time.

15. End of Phase Report and Evaluation

15.1 The Contractor shall provide an End of Phase Report on each relevant Phase of the Project, in the approved language, within 14 days of the Completion Date. The End of Phase Report shall be in the form as set out in Schedule B to this Section 2 and shall further be 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.

- 15.2 Notwithstanding the provisions of Conditions 15 and 15.1, the Authority's representative is entitled to carry out a visit to the Contractor's premises at any time for the purpose of due diligence and evaluation in respect of the Project.

16. Documentation and Source Code

- 16.1 The Contractor is to provide the following:

- name, version and source URL of software libraries and other components used to produce the Project,
- the data model(s) of the Project
- detailed user and system documentation (description of the Project and its operation and functions)
- operational and platform (operating system, database etc.) documentation
- installation guidelines and instruction
- well-structured source code

(collectively "documentation")

in a form, quality and structure sufficiently detailed and explanatory to enable a third party software developer to continue development and start maintenance of the Project.

The developer grants the Authority and third party licensees similar rights to the documentation as to the Project.

17. Intellectual Property Rights and License Grants

- 17.1 The Contractor does not by the Agreement transfer any of its ownership rights in the Project to the Authority, apart from the below license.
- 17.2 The Contractor grants the Authority a worldwide, irrevocable, non-exclusive licence, to use, reproduce, sub-license, make available, modify, display, perform, distribute, sell, and otherwise exploit the Project, hereunder any software and patent rights therein.
- 17.3 The Authority will sub-license the Project to any third party under the open source licenses GNU General Public License v. 3 or later ("GPLv3") and Mozilla Public License v. 2 or later ("MPLv2"), collectively the open source licenses ("OSL").
- 17.4 The Contractor shall ensure that no third party rights prevent the Authority from licensing as described in section 17.2 and sub-licensing as described above in section 17.3. Hereunder the contractor must ensure sufficient rights towards any employee, consultant, free-lancer and third party software supplier.

- 17.5 All third party software (including libraries) required to develop, maintain, test and operate the Project, shall be freely available in open source form under a generally recognized free software licenses compatible with the license granted under the Agreement.
- 17.6 In case of change of contractor, the Contractor shall, upon payment by the Authority at the agreed unit prices, provide termination and transition assistance. Such services shall be sufficient for the transfer of the Project to the Authority or any third party supplier appointed by the Authority.
- 17.7 The Contractor is entitled to develop proprietary modules (extensions) to the Project and further develop or modify the Project, provided that the Project remains freely available under the OSL. Consequently, the Contractor may use the Project:
- as a complement to commercial software products in the Contractors portfolio,
 - to develop extensions to the Project, and
 - to sell related professional services.

18. Contractors Obligations

- 18.1 The Contractor shall encourage the open source community, its employees, and subcontractors to engage in the further development of the Project.
- 18.2 The Contractor shall ensure that the Project is recorded and carefully distinguished from other material.
- 18.3 The Contractor shall ensure that development of the Project (including software and documentation) utilises well recognised industry standard development practices. Further, the Contractor shall ensure that all development of software in the Project shall be conducted by use of and provided on open source development platforms, to which the source code is freely available to the public under well recognised open source licenses.
- 18.4 The Contractor shall actively engage with the organisations that provide the standard specifications for the file format used in the Project. The Contractor shall provide feedback to resolve technical issues, and contribute in a dialogue for improvement of technical specifications of standards.
- 18.5 Any publication of articles related to the Project 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 work commissioned by the Authority. The views expressed in this publication are those of the author(s) and not necessarily those of the Authority".

19. Termination

- 19.1 Without prejudice to any other provision of the Agreement, this Agreement may be terminated by the Authority giving one months' notice in writing to the Contractor, unless the time remaining to the end of the relevant Phase is less than one month, in which case the notification time shall be

all remaining time to the end of that Phase. Should the option to terminate be exercised by the Authority, it shall indemnify the Contractor from and against all and any actual cost unavoidably incurred up until termination, and directly and exclusively attributable to work that the Contractor has been obliged to perform up until such time, by reason or in consequence of the termination provided that the Contractor takes all immediate and reasonable steps to minimise the loss.

- 19.2 With regards to Condition 19.1 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.
- 19.3 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 in Contractor. The Authority shall only be permitted to exercise its rights pursuant to this Condition 19.3 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.
- 19.4 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:
- 19.4.1 any approvals consent or licences required under this Agreement are not given unconditionally within 6 (six) months of the commencement of the Project Period;
 - 19.4.2 the Contractor is subject to an Insolvency Event;
 - 19.4.3 the Contractor is in Default under this Agreement and if:
 - 19.4.3.1 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
 - 19.4.3.2 the Default is not capable of remedy;
 - 19.4.4 any provision of this Agreement (other than as previously specified in the preceding provisions of this Condition 19) expressly entitles the Authority to terminate this Agreement;
 - 19.4.5 the Contractor, or any Subcontractor on whose resources he has relied in the procurement that has preceded this Agreement, becomes subject to any exclusion criteria listed in the Invitation to

tender; or

19.4.6 the Services are not in compliance with requirements on research and development services as defined in the Frascati Manual (Proposed Standard Practice for Surveys on research and Experimental Development, OECD, latest edition 2002; as referred to in the Invitation to Tender).

19.5 Termination of this Agreement by the Authority under the preceding provisions of the above Condition 19.4 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.

20. Consequence of Termination

20.1 Termination of this Agreement, however caused, shall not:

20.1.1 release the Contractor from any duty or obligation of confidence which falls on it, its servants, agents, employees or former employees under this Agreement or under the general law governing confidential information;

20.1.2 prejudice or affect any rights, action or remedy which shall have accrued before termination or shall accrue thereafter to any Party.

21. Equipment

21.1 The Contractor shall take all practical steps to purchase all materials, equipment, and services at a fair and reasonable price.

22. Warranties and Indemnities

22.1 The Contractor warrants and represents that:

22.1.1 the Contractor has full capacity and authority and all necessary licences, 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 Contractor will attribute (for Phase 1 as well as for each subsequent Phase for which he is awarded a contract) the paid by the Authority hereunder to the Research,

22.1.7 the provision of the Project and the Authority's use thereof shall not infringe any Intellectual Property Rights of any third party.

23. Indemnity, Insurance, and limitation of the Authority's liability

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:

23.1.1 any injury to persons, including injury resulting in death; and

23.1.2 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 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Agreement.

23.4 The Contractor shall hold employer's liability insurance in respect of staff in accordance with any legal requirement for the time being in force.

23.5 The Contractor shall produce to the Authority's Representative, on request, copies of all insurance policies referred to in this Condition or other evidence confirming the existence and extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.

23.6 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Agreement. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Condition 23.3.

23.7 In no event shall the Authority be liable the Contractor for indirect or consequential loss or damage.

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.

Such consent will only be given if the acquiring party, who is to assume all corresponding obligations of the Contractor under this Agreement, can prove to the full satisfaction of the Authority that the acquiring party fulfils all minimum requirements and selection criteria of the procurement that has preceded this Agreement.

- 24.2 The Contractor shall be responsible for the acts and omissions of his Sub-contractors as though they were his own.
- 24.3 Should the Authority become subject to a merger, split, or other restructuring measure, its rights and obligations shall automatically – without any consent from the Contractor being required – transfer to the new (where this is the case) legal entity that is to continue the activities encompassed by this Agreement. In no case shall the rights and obligations of the parties hereunder be affected by any changes in the ownership of the Authority.

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

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 applicable legislation on bribery and corruption etc. 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 between the parties arising out of or in connection with this Contract (other than in relation to the payment of any money) shall in the first instance be referred to the Contractor's Representative and the Authority Representative for resolution. The parties agree to work together in good faith to reach an agreed settlement of any such dispute.

28.2 If within 14 days of the meeting of the Contractor's Project Manager and the Authority Contract Manager the dispute has not been resolved, the Parties agree to submit the dispute to a Director of the Contractor and the appropriate Officer of the Authority or such other person as the Authority sees fit and who shall have responsibility to settle such dispute on behalf of the Authority. The Parties shall meet within 7 days of the reference to them of any dispute and shall work together in good faith to resolve the dispute.

28.3 If within 14 days the dispute has not been resolved, the dispute may be referred, by either Party, to mediation by a mediator to be agreed between the Parties. The fee for the appointed mediator shall be shared equally between the Parties.

28.4 Nothing in Clauses 28.1, 28.2 or 28.3 shall preclude either Party from commencing an action in a court of law in Sweden for a legal remedy where time is of the essence and the remedy sought is only available in a court of law. In all other circumstances the Parties shall attempt to resolve a dispute in accordance with Clause 29.2 before embarking on litigation.

28.5 If the matter cannot be resolved through mediation, 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.

28.6 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.

28.7 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 3, 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

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. Public Access to Information And Secrecy Act 2009

31.1 The Contractor acknowledges that the Authority is subject to the requirements of the Public Access to Information and Secrecy Act 2009 and shall assist and cooperate with the Authority to enable the Authority to comply with these Information disclosure requirements.

31.2 The Contractor shall ensure that its sub-contractors shall:

31.2.1 transfer any request for Information to the Authority as soon as practicable after receipt and in any event within five working days of receiving a request for Information;

31.2.2 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five working days (or such other period as the Authority may specify) of the Authority requesting that Information; and

31.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a request for information.

31.3 The Authority shall be responsible for determining at its absolute discretion whether any commercially sensitive Information and/or any other Information:

31.3.1 is exempt from disclosure

- 31.3.2 is to be disclosed in response to a request for Information, and in no event shall the Contractor respond directly to a request for Information unless expressly authorised to do so by the Authority.
- 31.4 The Contractor acknowledges that the Authority may disclose confidential Information:
- 31.4.1 without consulting with the Contractor, or
- 31.4.2 following consultation with the Contractor and having taken its views into account.
- 31.5 The Contractor shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

32. Unlawful Discrimination and Human Rights

- 32.1 The Contractor shall not discriminate directly or indirectly or by way of victimisation or harassment against any person on racial grounds;
- 32.2 The Contractor shall notify the Authority immediately of any investigation or proceedings against the Contractor 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 any primary legislation on unlawful discrimination or human rights 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 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 undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under any primary legislation on unlawful discrimination or human rights.

- 32.6 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.

33. No Rights of Third Parties

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. Entire agreement

This Agreement constitutes the entire agreement between the parties relating to its subject matter. Each Party acknowledges that it has not entered into this Agreement on the basis of any warranty, representation, statement, agreement or undertaking except those expressly set out in this Agreement. Each Party waives any claim for breach of this Agreement, or any right to rescind this Agreement in respect of, any representation which is not an express provision of this Agreement. However, this clause does not exclude any liability which either Party may have to the other (or any right which either Party may have to rescind this Agreement) in respect of any fraudulent misrepresentation or fraudulent concealment prior to the execution of this Agreement.

35. Law

This Agreement shall be considered as a Contract made in Sweden and be construed in accordance with Swedish Law. The Swedish Courts will have exclusive jurisdiction to deal with any dispute which has arisen or may arise out of or in connection with this Agreement or the procurement procedure that has preceded it, except that either Party may bring proceedings for an injunction in any jurisdiction.

SCHEDULE A VARIATION TO CONTRACT FORM

Project Title:

..... Tender No:
.....

Contract between the [] (the "Authority")

And [] ("the Contractor")

dated (the Contract")

Variation No: _____ Date:

1. The Contract is varied as follows:
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

SIGNED:

For: The Authority

By:

Full Name:

Position:

Date:

For: The Contractor

By:

Full Name:

Position:

Date:

SCHEDULE B END OF PHASE REPORT FORM

(See separate template, [End of Phase Report Form_7](#))

SECTION 3 KEY STAFF

[NAME & FULL POSTAL ADDRESS]

[The Contractor's Representative]

[NAME & ADDRESS]

[NAME & ADDRESS]

[NAME & ADDRESS]

[NAME & FULL POSTAL ADDRESS]

[The Authority's Representative]

SECTION 4 DOCUMENTS

DOCUMENT TYPE: REFERENCES TO QUOTE

Phase 1 Documents

- 1 Invitation to Tender Document (Process and Timelines)
- 2 Challenge Brief
- 3 Guidance (for completing Tender Form)
- 4 Tender Form
- 5 Questions and Answers Document
- 6 Sample Framework Agreement Phases 1-3 (this document)
- 7 End of Phase Report Form

Documents not included above are intentionally excluded from this Agreement.

SECTION 5 CONTRACT FOR PHASE 2

This contract is made between

- (1) [] (the "Authority"); and
- (2) [] ("the Contractor")

IT IS AGREED as follows:

1. This contract is made under and is subject to the terms and conditions of the Framework Agreement made between the parties on [insert date] for the project Preforma. It is made subsequent to a call for bids for Phase 2.

All terms used in this contract shall have the meaning ascribed to them in the Framework Agreement, unless otherwise is evident from the context.

2. By the signing of both Parties of this contract, the Authority assigns to the Contractor and the Contractor undertakes the task of performing the Services within the scope of Phase 2 of the Project. The Authority has simultaneously entered into corresponding contracts for Phase 2 with other contractors.
3. The Contractor shall manage and complete the Services with regard to Phase 2 in accordance with the Challenge Brief, the bid submitted by the Contractor for Phase 2, and shall allocate sufficient resources to the Services and the Project to enable it to comply with this obligation.
4. The Services with regard to Phase 2 shall be provided and delivered in full within the time set out in the call for the bids.
5. The total amount to be paid by the Authority to the Contractor for Services related to Phase 2 shall not exceed the relevant amounts detailed in the Invitation To Tender. Subject to these limits the Contractor is free to administer received payments within the terms of the Framework Agreement and this contract without further reference to the Authority.
7. The contract becomes effective upon signing by both Parties and shall remain in effect until the Completion Date of Phase 2.

Signed by the duly authorised
signatory of the Authority:

.....
..... Signature

.....
..... Full Name

.....
..... Position Held

.....
..... Date

Signed by the duly authorised
signatory of the Contractor:

.....
..... Signature

.....
..... Full Name

.....
..... Position Held

.....
..... Date

SECTION 6 CONTRACT FOR PHASE 3

This contract is made between

- (1) [] (the "Authority"); and
- (2) [] ("the Contractor")

IT IS AGREED as follows:

- 1. This contract is made under and is subject to the terms and conditions of the Framework Agreement made between the parties on [insert date] for the project Preforma. It is made subsequent to a call for bids for Phase 3.

All terms used in this contract shall have the meaning ascribed to them in the Framework Agreement, unless otherwise is evident from the context.

- 2. By the signing of both Parties of this contract, the Authority assigns to the Contractor and the Contractor undertakes the task of performing the Services within the scope of Phase 3 of the Project. The Authority has simultaneously entered into corresponding contracts for Phase 3 with the other contractors.

- 3. The Contractor shall manage and complete the Services with regard to Phase 3 in accordance with the Challenge Brief for Phase 3 and the bid submitted by the Contractor for Phase 3, and shall allocate sufficient resources to the Services and the Project to enable it to comply with this obligation.

- 4. The Services with regard to Phase 3 shall be provided and delivered in full within the time set out in the call for the bids.

4 The total amount to be paid by the Authority to the Contractor for Services related to Phase 3 shall not exceed the relevant amounts to be detailed by the Project Management Team. Subject to these limits the Contractor is free to administer received payments within the terms of the Framework Agreement and this contract without further reference to the Authority.

- 7. The contract becomes effective upon signing by both Parties and shall remain in effect until the Completion Date of Phase 3.

Signed by the duly authorised
signatory of the Authority:

.....
..... Signature

.....
..... Full Name

.....
..... Position Held

.....
..... Date

Signed by the duly authorised
signatory of the Contractor:

.....
..... Signature

.....
..... Full Name

.....
..... Position Held

.....
..... Date