

AGREEMENT

THIS AGREEMENT IS MADE ON

Between:

Scottish Aquaculture Research Forum (SARF), a company limited by guarantee and not having a share capital, registered in Scotland under Company Number SC267177, having its Registered Office care of FRM LTD, **SARF, PO Box 16, Birnam, Dunkeld, Perthshire PH8 0WU, Scotland** and recognised as a Scottish charity under Scottish Charity Number SC035745

- and -

("Contractor")

- and -

("Co-funders")

WHEREAS:

1. SARF wishes to have carried out the Project identified in Appendix A.
2. The Contractor has submitted to SARF an application for carrying out of the Project.
3. SARF and the Co-funders are willing to provide funding to the Contractor for the Project.

NOW IT IS HEREBY AGREED:

1. The Contractor, SARF and the Co-funders agree to observe and comply with SARF Standard Terms and Conditions for Research and Development Contracts ("Terms and Conditions") which are incorporated into this Agreement.
2. The Contractor will carry out the Project in accordance with this Agreement.
3. SARF and the Co-funders will pay to the Contractor its costs properly incurred in carrying out the Project in accordance with this Agreement.
4. This Agreement supersedes and replaces any and all previous contracts, agreements and statements relating to the Project, and comprises:
 - This document – Form of Agreement;
 - Appendices:
 - A – Specification and Research Proposal together with any specified amendments
 - B – Pricing Schedule
 - C – Reports Schedule
 - D – Contacts Schedule
 - E – Intellectual Property Schedule
 - F - The Terms and Conditions
5. The Contractor shall commence work on the Project on (the "Date of Commencement").
6. The Contractor shall complete the Project by (the "Date of Completion").
7. For the purposes of Clause 31 of the Terms and Conditions (conflict or inconsistency), the documents shall take precedence in the order in which they appear in clause 4 of this Form of Agreement.
8. The definitions herein apply equally within each Appendix hereto.

Signed on behalf of SARF: (by two Directors or by one Director and the Company Secretary).

Signature:.....

Signature:.....

Name of signatory:.....

Name of signatory:.....

Date:

Date:

Signed on behalf of the Contractor:

Name of Contractor:

Signature:.....

Name of signatory:.....

Date:

Signed on behalf of the Co-funders:

Name of Co-funder:

Signature:.....

Name of signatory:.....

Date:

THIS IS THE APPENDIX A REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN SARF, THE CONTRACTOR AND THE CO-FUNDERS DATED

APPENDIX A - Specification and Research Proposal

1. The title of the Project is:
 2. The Project Code is:
 3. The objectives of the Project are: As specified in the research proposal **SARF....**, submitted on the SARF Application form, Section 10 (a) Research Objectives.
- 1 **Objective(s).** Please give details of (a) each research objective, (b) to what extent these objective(s) are interdependent; and (c) whether any factors exist to delay achievement of the objective(s). Where there is more than one contractor, please show clearly below the roles of each.

(a)

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4. The approaches and research plan for the Project are: As specified in the research proposal **SARF....**, submitted on the SARF Application form, Section 11 (a) Approaches and Research Plan.
- 11 (a) **Approaches and Research Plan.** Outline the experimental approaches to be used in realising the objectives and set out the work plan for the life of the project stating clearly how you intend to proceed. Please number the Approaches in the same way as the Objectives. Where there is more than one contractor, please show clearly below the roles of each. **If your application is accepted, the Approaches and Research Plan will be included in the agreement between you and SARF. Please therefore, restrict your entry to the salient points and set these out clearly and concisely. To move to the next field, press DOWN arrow.**

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5. The primary milestones for the Project are: As specified in the research proposal **SARF....** on the SARF Application form, Section 12 (a) Research Objectives.
- 12 (a) **Primary** milestones. (These must number no more than four in each project year. Achievement of each must be **essential** if the objectives of the project are to be met. If your application is accepted, they will form part of the agreement between you and SARF). **To exit this field, press the DOWN arrow.**

Milestone	Target date	Title

THIS IS THE APPENDIX C REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN SARF, THE CONTRACTOR AND THE CO-FUNDERS DATED 2

APPENDIX C – Reporting Schedule

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

SARF Research - C/o FRM Ltd
SARF, PO Box 16,
Birnam, Dunkeld,
Perthshire PH8 0WU

Annual and Interim Reports

2. The Contractor shall submit an annual report for each Project Year in accordance with this condition. At the request of SARF, the Contractor will submit an interim report in the same format as specified in paragraph 3 of this condition for the annual report.
3. The Contractor shall submit an annual report for each Project Year, as follows. The Contractor shall provide one hard copy of the report, and one copy on e-mail (using resreports@sarf.org.uk), in the format specified by or agreed with SARF, no later than 4 weeks after the end of each Project Year, or, for work lasting one year or less, no later than 4 weeks after the end of the first six months. This report shall:
 - 3.1. list the scientific objectives as set out in paragraph 3 of Appendix A, indicating where amendments have been agreed;
 - 3.2. indicate in non-scientific terms the scientific progress achieved since the commencement of the Project or since the last report; together with any findings of particular interest;
 - 3.3. indicate whether the scientific objectives in paragraph 3 of Appendix A are appropriate for the remainder of the Project, giving reasons for any changes, together with financial, staff and time implications;

list the primary milestones for the relevant Project Year as set out in paragraph 5 of Appendix A, indicating which primary milestones have been met and whether the remaining primary milestones appear realistic;

indicate the number of staff years by grade of direct scientific effort and the actual costs expended;

list any outputs, e.g. published papers or presentations and identify any opportunities for exploiting any Intellectual Property or technology transfer arising out of the Project;

it is the responsibility of the contractor to ensure that no publication of results occurs that could prejudice patent;

comment briefly on any new scientific opportunities which may arise from the Project.

Final Report

4. The Contractor shall submit a final report within **two weeks** of completion of the Project. Unless specified otherwise in the project specification and or mutually agreed by the contractor and the project sponsors or their appointed agents, the Contractor shall provide two hard copies of the report, and one copy on e-mail (using resreports@sarf.org.uk), in the format specified by or agreed with SARF. This report shall consist of an identification sheet, executive summary and scientific record. In addition annexes of detailed information may be added. The final report shall contain:
 - 4.1. a sheet identifying the Project's code and title, as set out in Appendix A; the representatives of the Parties, as set out in Appendix D; the Contractor's Representative's address; the Project's Date of Commencement and Date of Completion; the final year and total Project

- costs; total staff input by grade; whether any Intellectual Property rights have arisen from the Project (which may be verified by an independent Intellectual Property Rights advisor); and the scientific objectives and the primary milestones for the final year;
- 4.2. a one page executive summary written in English in a style understandable to the intelligent non-scientist and containing the following:
 - 4.3. the objectives of the Project and why it was important to do it;
 - 4.4. the main findings of the Project presented in bullet form (this should be the major part of the executive summary);
 - 4.5. the main implications of the findings for the sustainable development of aquaculture and future scientific research;
 - 4.6. any action to follow the research, including action in relation to Intellectual Property rights and/or technology transfer, where relevant, including whether the advice of an independent Intellectual Property rights expert has been obtained.
 - 4.7. a scientific report, stapled (i.e. not bound), copied back to back and in a standard scientific format, stating:
 - 4.8. the scientific objectives and primary milestones for the Project as set out in paragraphs 4 and 5 of Appendix A ;
 - 4.9. the methods used and results of the research;
 - 4.10. discussion of the results and their reliability;
 - 4.11. the extent to which the objectives set out in paragraph 3 of Appendix A have been met;
 - 4.12. details of possible future research and how this may relate to other work in the field, identifying further avenues as appropriate.
 - 4.13. a list of final or draft publications arising out of the Project together with copies of any other relevant papers.
5. Final reports may be made available, on request by SARF, to enquirers. When submitting the final report to SARF the Contractor shall indicate any information contained in the report which he considers to be commercially sensitive in which event SARF shall not disclose such information without first having consulted with the Contractor.
 6. SARF reserves the right to return to the Contractor any annual or final report submitted by the Contractor which is not, in the reasonable opinion of SARF, satisfactory, either in form or content, having regard to the provisions of this Schedule. In the event that such a report is returned to the Contractor, the Contractor shall remedy any deficiencies identified by SARF and submit a revised report at no additional cost to SARF or the Co-funders.
 7. The Contractor shall supply any additional reports regarding the progress of the Project, at such time or times as SARF may reasonably require.
 - 7.1. In the event that the Contractor fails to provide any one or more of the Annual, Interim or Final Reports due in terms of this Appendix, or any other draft or interim reports which may have been agreed to, by the specified or agreed time-limit and/or to the specified reporting standard required by SARF, either in terms of this Contract or as notified to the Contractor by SARF, SARF will be entitled to impose and collect a penalty.
 - 7.2. The penalty will entitle SARF to reduce the contract payment due to the Contractor at a rate of £500 for the first week or part thereof for the period of delay in providing a Report to the required standard. For subsequent delay in providing a report of the required standard, the sum retained by SARF as final payment will be further reduced at a rate of 1% of the total project cost to SARF per week or part thereof.

- 7.3. If it is the Final Report which is delayed and/or not to the required standard, the penalty incurred will be deducted from the final payment due to the Contractor and, where the penalty exceeds that final amount, SARF reserves the right to secure payment of the penalty, or any remaining part thereof due, from the Contractor up to the full amount of the Contract funded by SARF.
- 7.4. SARF and co-sponsors must be acknowledged on all printed and display materials associated with the above project, in press releases and any media coverage.
- 7.5. The content of published materials, publicity and press releases is to be agreed with SARF prior to publication.
- 7.6. Use of SARF logo must comply with SARF Identity Guidelines available on the SARF website. The use of co-sponsors' logos must comply with any comparable requirements.
- 7.7. SARF is able to publicise the project and any publications on its own website and in public documents. We may at any time request written updates and digital material (including images) for such purposes.
- 7.8. [Organisation or author] warrants to SARF that the project to be funded by SARF is original and that it is not a violation or infringement of any existing copyright or licence of any other right of any other person or organisation.
- 7.9. [Organisation or author] undertakes to obtain appropriate permission for any copyright material used in the project, where the copyright rests with a person or organisation other than [Organisation or author]. [Organisation or author] shall provide appropriate details, including proof of consent and the required acknowledgements.
- 7.10. On receiving notification from SARF that the final report from the project is considered acceptable, [Organisation or author] shall assign all copyrights and rights to the nature of the copyright in the project to which it is legally entitled to SARF, by signing the Copyright Assignment form and returning it to SARF.
- 7.11. By accepting the terms and conditions of this agreement, the [Organisation or author] asserts their moral right to be identified as the author of the project and the report.
- 7.12. SARF shall ensure that [Organisation or author] is appropriately acknowledged in publication of the final report, subject to the report being approved by SARF.

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

APPENDIX D – Contacts Schedule

1. SARF's Representative will be: **Dr Mark James**
2. SARF's address for correspondence and submission of invoices will be:
SARF, PO Box 16, Birnam, Dunkeld, Perthshire PH8 0WU, Scotland
3. The Contractor's Representative will be:
4. The Contractor's address for correspondence and service will be:
5. Where the Contractor consists of more than one person there shall be only one individual acting as the Contractor's Representative.
6. The Co-funders for the purposes of this Agreement are:
7. The Co-funders' address for correspondence and service will be:
8. The Co-funders' Representative will be: ¹

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

INTELLECTUAL PROPERTY SCHEDULE

INTELLECTUAL PROPERTY RIGHTS RETAINED BY SARF

Ownership and Protection

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

Commercial Exploitation

3. The Contractor will use his reasonable endeavours to exploit the Results commercially for his benefit and the benefit of SARF and the Co-funders.
4. The Contractor shall identify and inform SARF of any such Intellectual Property which he considers suitable for commercial exploitation. Where the Contractor has identified an opportunity for the commercial exploitation of the Intellectual Property he may either apply for a licence to himself with a right to sub-licence or provide such assistance as is required by SARF to facilitate a licence being granted by SARF to a third party.
5. The Contractor shall identify and inform SARF of any Intellectual Property which may be suitable for patent, copyright, Registered design, trademark or other legal protection and shall use his reasonable endeavours to apply for such protection throughout or in any part of the world in the name of SARF, and shall maintain such protection in such part of the world as he considers suitable at his own expense.
6. Without prejudice to paragraph 8, the Income from the commercial exploitation of the Results shall, after deduction of allowable costs as described in paragraph 7, be apportioned between the Parties as follows:
 - 6.1. SARF and Co-Funders, 10%, to be divided in the proportion of the actual payments made to the Contractor under the Agreement by SARF and Co-Funders respectively;
 - 6.2. the Contractor, 90%, to be divided, where the Contractor is more than one person, in the same proportion as the payments received under the Agreement by each person.
7. The allowable costs for the purposes of paragraph 6 shall not include any of the sums referred to in the Payment Schedule and shall be limited to:
 - 7.1. the registration fees for the registering of any rights in relation to such Results;

- 7.2. any legal costs reasonably incurred in relation to legal proceedings in relation to such Results in any appropriate forum and before any appropriate tribunal in any country and any costs ordered by any such tribunal to be paid by the Parties or any of them;
 - 7.3. any other reasonable cost or expenditure which may be agreed from time to time by SARF and the Contractor; and
 - 7.4. subject to SARF's prior agreement, any reasonable marketing, packaging and/or distribution costs, and any relevant experimental development costs including costs of field trials and/or demonstration projects incurred at the Contractor's expense.
8. The Contractor shall have sole responsibility for making any payments due to his employees or contractors under any rewards or incentive schemes, whether contractual, ex gratia, or statutory, in relation to the Results, and any such payments shall not be a cost or expenditure liable to be subtracted from any Income pursuant to paragraph 7 above.
 9. Where the Contractor does not wish to protect the Intellectual Property or considers that Intellectual Property should not be protected in any part of the world but SARF desires such protection to be obtained then SARF shall be entitled to obtain such protection at his own cost. The Contractor will not be entitled to any share of the Profit generated as the result of the protection of Intellectual Property obtained by SARF.
 10. For the avoidance of doubt, the provisions of this schedule do not apply to and do not affect any Intellectual Property in existence before the commencement of the Project.

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

APPENDIX F – Terms and Conditions

1. Definitions

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

“Agreement”	The agreement between SARF, the Co-funders and the Contractor incorporating this Document and the Appendices A to F.
“Appendix”	One of the appendices lettered A to F incorporated into the Agreement
“Application”	The “Application for a Research Contract with SARF” submitted by the Contractor to SARF in respect of the Project, which forms part of this Agreement (Appendix A).
“Business Day”	A day (other than a Saturday or Sunday) on which banks in the city of London are generally open for business
“Contractor”	The person or persons named on the Agreement as the Contractor. Where the Contractor consists of more than one person, the obligations of those persons in respect of the Agreement shall be joint and several.
“Contractor's Representative”	The person named in paragraph 3 of Appendix D, subject to the provisions of Condition 4
“Co-funders”	Where applicable, the person or persons or organisation(s) named as “Co-funders” in Appendix D – Contacts Schedule.
“Co-funders' Representative”	Where applicable, the person or persons named in paragraph 8 and 10 of Appendix D, subject to the provisions of Condition 4
“Date of Commencement”	The date set out in paragraph 5 of Appendix B.
“Date of Completion”	The date set out in paragraph 6 of Appendix B.
“Eligible Costs”	Costs incurred by the Contractor for the purposes of the carrying out of the Project, limited to those costs identified in the ‘Financial Guidelines for Project Cost Estimates’ section of the Application.
“Income”	Any revenues received by the Contractor (including without limitation the sale or disposal of products or services, royalties, payments for licences or options and stage payments) irrespective of whether such payment is in money or other consideration, arising from the use or exploitation of the Results or any part of the Results.
“Intellectual Property”	Any copyright, design right, trade mark, trade name, know-how, patentable invention for the purposes of the Patents Act 1977, database right for the purposes of the Copyright and Rights in Databases Regulations 1997, and all intellectual property, the rights to which are protectable by law.

“Key Personnel”	Any member of the Contractor’s personnel identified by name or job title as key personnel in the Contacts Schedule.
“Know-how”	All information not in the public domain held in any form (including, without limitation, oral and written instructions, diagrams, drawings, formulae, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists and scientific methods) used in connection with or arising as a result of the Project.
“Parties”	SARF, the Contractor and the Co-funders.
“Period for the Project”	The period for the carrying out of the Project, being the period between the Date for Commencement and the Date for Completion.
“Profit”	The royalties received by the Contractor from the exploitation of the Results
“Project”	The research project particulars of which, are set out in Appendix A .
“Project Year”	Each period of 12 months during the Period for the Project calculated from the Date for Commencement.
“Results”	Any Intellectual Property created by agents, employees, students or sub-contractors of the Contractor as a result of the Project.
“SARF”	The Scottish Aquaculture Research Forum.
“SARF’s Representative”	The person named in paragraph 1 of Appendix D, subject to the provisions of Condition 4.
“Schedule”	Any of the schedules annexed to the Agreement.
“Terms and Conditions”	SARF Standard Terms and Conditions for Research and Development Contracts
“Territory”	The world, universe or any part thereof.

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

- 1.2.1. to the Contractor or to SARF or to the Co-funders shall, where appropriate, be references to any lawful successor, assignee or transferee;
- 1.2.2. to the Contractor shall, where appropriate, be references to each individual person constituting the Contractor;
- 1.2.3. to the Co-funders shall, where appropriate, be references to each individual person constituting the Co-funders. Where there are no Co-funders, references to the Co-funders shall have no meaning or effect;
- 1.2.4. to conditions are references to the conditions of these Terms and Conditions;
- 1.2.5. to "person" or "third party" include any individual, company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency, whether or not having a separate legal personality;
- 1.2.6. to one gender include all genders, and references to the singular include the plural and vice versa;
- 1.2.7. to any statute, statutory provision or regulation, are references to that statute, statutory provision or regulation, as from time to time amended, extended or re-enacted.

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

2. Duration

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

3. Payment

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

4. Payment of Contractors and Sub-contractors

- 4.1. Where the Contractor enters into a sub-contract for the provision of services as part of the Project, the Contractor shall ensure that a term is included in the sub-contract which requires the Contractor to pay all sums due to the sub-contractor within 30 days after the Contractor has verified the relevant invoice.
- 4.2. The Contractor shall use all reasonable endeavours to verify the invoices promptly.

Where the Contractor becomes liable to pay interest payments to a sub contractor under the provisions of the Late Payments of Commercial Debts (Interest) Act 1998, SARF will not reimburse those costs.

- 4.3. Payments made by SARF in accordance with the Agreement shall not exceed the amounts specified in paragraph 2.5 of Appendix B – Pricing Schedule.
- 4.4. The total amount of the payments to be made by the Co-funders to the Contractor shall not exceed the amount specified in paragraph 2.2 of Appendix B – Pricing Schedule.
- 4.5. The Contractor shall provide to SARF and the Co-funders an accurate statement (invoice), signed on behalf of the Contractor's Finance Department, of the Eligible Costs properly incurred by the Contractor in carrying out the Project during the relevant period, this statement to show separately the costs to be met by SARF and the Co-funders. These statements shall be submitted quarterly in arrears from the Date of Commencement of the Project as specified in Appendix B – Pricing Schedule.
- 4.6. Subject to the provisions of Appendix C – Reports Schedule and completion of the reports specified in Appendix C to the satisfaction of SARF and the Co-funders, SARF and the Co-funders shall pay to the Contractor the amount of the Eligible Costs which SARF and the Co-funders reasonably consider to have been properly incurred by the Contractor in the carrying out of the Project during the relevant period, within 30 days of receiving a statement satisfactory to SARF and the Co-funders.
- 4.7. In the event that no such statement satisfactory to SARF and the Co-funder is provided within the time specified in Condition 4.6, neither SARF nor the Co-funder shall be under any obligation to make the relevant payment until 30 days after the date on which a statement that is satisfactory to SARF and the Co-funders is received by each.
- 4.8. The final quarter's payment will be made within 35 working days of receipt of a final report satisfactory to SARF, subject to the provisions of Appendix C – Reports Schedule and completion of the reports specified in Appendix C to the satisfaction of SARF and the Co-funders, as required by Condition 6.
- 4.9. SARF and the Co-funders are liable to the Contractor only for their respective proportion of each payment, as identified in paragraph 2 of Appendix B, on receipt and acceptance of satisfactory project/research deliverables. SARF and the Co-funders are not jointly or severally liable to the Contractor in respect of any payment to be made under the Agreement.

- 4.10. Where the Contractor is VAT registered, it shall provide to SARF and to the Co-funders a VAT invoice in respect of the amounts of each of their respective payments.

5. Nominated officers

- 5.1. SARF's Representative shall be the person named in paragraph 1 of Appendix D – Contacts Schedule, or such other person that SARF may nominate having given 14 days notice to the Contractor and the Co-funders.
- 5.2. The Contractor's Representative shall be the person named in paragraph 3 of Appendix D – Contacts Schedule, or such other person that the Contractor may nominate having given 14 days notice to SARF and the Co-funders.
- 5.3. The Co-funders' Representative shall be the person or persons named in paragraph 8 and 10 of Appendix D – Contacts Schedule, or such other person that the Co-funders may nominate having given 14 days notice to SARF and the Contractor.

6. Contractor's Status

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

7. Warranties

- 7.1. The Contractor warrants to SARF and to the Co-funders that:
- 7.1.1. the Contractor will carry out and shall ensure that his employees, agents and sub-contractors also carry out the Project with due diligence and reasonable skill and care, in accordance with best professional, technical and scientific knowledge and practice, and any legislative requirements;
- 7.1.2. any materials or processes used in connection with the carrying out of the Project shall be in accordance with standards set out in the Agreement;
- 7.1.3. the Contractor will deploy in the performance of the Project only suitably qualified, trained, experienced and (where appropriate) supervised staff, together with any sub-contractors intimated to and approved by SARF and the Co-funders;
- 7.1.4. the proper use by SARF and any Co-funders of any documentation, materials or results delivered by the Contractor pursuant to the Agreement shall not, to the best of the Contractor's knowledge and belief, constitute an infringement of the Intellectual Property rights of any third party. The Contractor warrants to SARF and to the Co-funders to undertake appropriate patent, registered design right, trade mark, and/or literature searches to identify any actual or potential third party Intellectual Property rights prior;
- 7.1.5. the Contractor has understood the nature and extent of the Project to be carried out and satisfied himself in relation to all matters connected with the project including the supply of and conditions affecting labour, the suitability of the premises where the project is to be carried out and any Equipment necessary for the carrying out of the Project subject to all such matters being reasonably discoverable by the Contractor.
- 7.1.6. the Contractor will use his reasonable endeavours to exploit the Results commercially for his benefit and the benefit of SARF and the Co-funders.
- 7.2. Nothing in this Agreement shall be taken as limiting or excluding SARF's or the Co-funders' rights or the Contractor's obligations pursuant to any statute, statutory instrument or the common law.

8. Limitation of liability

8.1. In the event of any breach or breaches of this Agreement by SARF or by the Co-funders, neither SARF nor the Co-funders shall be liable to the Contractor in respect of any resulting:

- 8.1.1. loss of profit, business, revenue, goodwill or anticipated savings;
- 8.1.2. indirect or consequential loss or damage.

8.2. The aggregate liability of SARF to the Contractor, or of the Co-funders to the Contractor, arising out of any breach or breaches of this Agreement shall in respect of SARF be limited to the sum identified against SARF in Appendix B and in respect of the Co-funders be limited to the sums identified against each of them in Appendix B – Pricing Schedule, of the total sum to be paid to the Contractor set out in Appendix B – Pricing Schedule.

9. Indemnities

9.1. The Contractor shall indemnify and keep indemnified on a full and unqualified basis SARF and the Co-funders against any and all:

- 9.1.1. all reasonable actions, claims, demands, costs, charges and/or expenses arising out of any loss or damage (including negligence, breach of contract, breach of statutory duty, consequential and indirect loss, or other wrongful act or omission on the part of the Contractor) or injury (including death) of any person or to any property which arises out of, or in connection with this and any sub-contractor's performance of the Project.
- 9.1.2. infringement or alleged infringement by the Contractor of any Intellectual Property right in relation to the Project

9.2. The indemnity contained in Condition 9.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of SARF, its agents or Co-funders.

10. Insurance

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

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

10.3. The policy or policies of insurance referred to in Conditions 10.1 and 10.2 shall be shown to SARF's Representative, whenever he requests, together with satisfactory evidence of payment of premiums. In the event that non-disclosure of policies to third parties is a mandatory requirement set by insurers either a copy of the policy or satisfactory evidence of payment of premiums for the relevant types of insurance cover must be provided.

11. Records and Monitoring of Progress

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

12. National Audit Act

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

13. Contractor's Performance and Personnel

- 13.1. The Contractor shall properly manage and monitor the Project and inform SARF immediately if any aspect of the Agreement is not being or cannot be performed.
- 13.2. The Contractor shall provide all the facilities and Equipment that are necessary to complete the Project.
- 13.3. The Contractor shall deploy sufficient personnel of appropriate qualifications, competence and experience to complete the Project to time and shall ensure that those personnel are properly managed and supervised.
- 13.4. The Contractor shall give SARF, if so requested, full particulars of all persons who are or may be at any time employed on the Project.
- 13.5. If, after due consultation with the Contractor, SARF together with the Co-funders gives the Contractor notice that any person or Equipment is to be removed from involvement in the Project, the Contractor shall take immediate steps to comply with such notice and such decision of SARF shall be final and conclusive.

- 13.6. The Contractor shall take all reasonable steps to avoid any changes of Key Personnel, but where the Contractor considers it necessary to do so, he will give SARF not less than one month's notice of any intention to change any Key Personnel and the reasons for such change.

14. Compliance with Anti-Discrimination Legislation

- 14.1. The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, Sex Discrimination Act 1975 or the Disability Discrimination Act 1995, or any other relevant anti-discrimination legislation in force.
- 14.2. The Contractor shall take all reasonable steps to secure the observance of the provisions of condition 14.1 by all its servants, agents and/or sub-contractors engaged in the execution of the Project.

15. Health and Safety

- 15.1. In carrying out the Project, the Contractor shall comply with best practice and all relevant provisions, whether statutory or otherwise, relating to health and safety at work and shall ensure that his employees and sub-contractors also so comply, he shall produce evidence of such compliance, if so requested by SARF's representative.

16. Corrupt Gifts and Payments (including payments of commissions)

- 16.1. The attention of the Contractor is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916. The Contractor shall not do (and warrants that in entering into the Agreement he has not done) any of the following:
- 16.1.1. Solicit, receive or agree to receive from any person or offer give or agree to give any person or procure for any person any gift or consideration of any kind as an inducement, advantage or reward for doing or not doing anything or for showing favour or disfavour to any person in relation the Agreement or any other contract with SARF;
- 16.1.2. enter into this or any other contract with SARF in which commission has been paid or agreed to be paid by him or on his behalf, unless, before the Agreement is made, particulars of any such commission and of the terms and conditions of any agreement for the payment of it have been disclosed in writing to SARF's representative. If the Contractor or any of its employees or agents breaches this condition 16 or commits any offence under the Prevention of Corruption Acts 1889 to 1916 in relation to the Agreement or any other contract for SARF, SARF may terminate the Agreement forthwith and recover from the Contractor the amount of any loss resulting from such termination and/or recover from the Contractor the amount or value of any such gift, consideration or commission.

17. Conflict of Interest

- 17.1. The Contractor shall ensure that there is no conflict of interest as to be likely to prejudice his independence and objectivity in performing the Project and undertakes that upon becoming aware of any such conflict of interest during the performance of the Project (whether the conflict existed before the award of the Agreement or arises during the performance of the Project) he shall immediately notify SARF in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as SARF may reasonably require.
- 17.2. Where SARF is of the opinion that the conflict of interest notified to it under Condition 17 is capable of being avoided or removed, SARF may require the Contractor to take such steps as are necessary to avoid or remove the conflict.
- 17.3. If the Contractor fails to avoid or remove the conflict SARF may terminate the Agreement and recover from the Contractor the amount of any loss resulting from such termination.

- 17.4. Where SARF is of the opinion that the conflict of interest which existed at the time of the award of the Agreement could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed, SARF may terminate the Agreement immediately for breach of a fundamental condition and, without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such termination.

18. Publication and Disclosure

- 18.1. Subject to the provisions of APPENDIX C Reporting Schedule and conditions 18.3, 18.4 and 18.6, the Contractor shall endeavour to make information about, and results from the Project generally available, and may do so provided he acknowledges in any public statement the financial support of SARF and of the Co-funders.
- 18.2. Subject to the requirements of Appendix C – Reports Schedule SARF shall have the right to disclose, copy or otherwise distribute to the public or use in any way any information arising out of the Project or comprised in any work relating to the Project, as it sees fit.
- 18.3. Where the Project, or any matter related to it, has been identified as being sensitive by:
- 18.3.1. the Contractor or the Co-funders, or
 - 18.3.2. SARF, as notified in writing to the Contractor or the Co-funders,
- the Contractor or the Co-funders shall give written notice to be received by SARF at least 10 working days before any planned public statement or other disclosure relating to the Project, providing details of the information proposed to be disclosed, the reason, and the medium of disclosure.
- 18.4. The Contractor or Co-funders shall notify SARF immediately if approached by the media about the Project. The Contractor or Co-funders shall notify SARF immediately if approached by anyone about a matter related to the Project which is considered sensitive by the Contractor or the Co-funders, or by SARF as notified to the Contractor or Co-funders in accordance with Condition 18.3.2.
- 18.5. For the avoidance of doubt, the notifications required by conditions 18.3 and 18.4 are for the purposes of informing SARF or the Contractor or Co-funders (as the case may be) and are not designed to interfere with the issue of any public statement.
- 18.6. Where the carrying out of the Project results in, or materially contributes to, the creation of Intellectual Property which the Contractor or SARF considers may be suitable for commercial exploitation or form of Intellectual Property protection, no disclosure of information may be made by the Contractor or the Co-funders which would jeopardise such exploitation.
- 18.7 The Parties acknowledges that, in order to be compliant with the Freedom of Information Act 2000, the Environmental Information Regulations 2004, or any other applicable legislation governing access to information (the "FOI Legislation"), to which they may be subject any Party may be obliged to provide information, on request, to third parties that relates to this Agreement.
- 18.8 In the event that a Party ("the receiving Party") receives a request for information relating to the Agreement falling within the scope of the FOI Legislation, it shall be entitled to disclose such information as is necessary in order to ensure its compliance with the FOI Legislation. Where a Party reasonably considers that information is exempt from disclosure, it shall use reasonable endeavours to consult with the other Parties, but the receiving Party's decision as to whether such information should be disclosed shall be final and binding.
- 18.9 In the event that a Party requires the assistance of any other Party in supplying any information falling within the scope of the FOI legislation that is held or controlled by that Party or any other person engaged in relation to the Agreement, the other Party will provide such assistance, at its own cost within ten (10) days of receiving the request.

- 18.10 The receiving Party shall not be liable for any loss, damage, harm or other detriment suffered by any other Party arising from the disclosure of any information falling within the scope of the FOI Legislation.

19. Data Protection

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

20. Equipment

- 20.1. All Equipment purchased by the Contractor for use on the Project shall, where reasonably practicable, be acquired by competitive tender.
- 20.2. Unless otherwise agreed in writing with SARF, the Contractor shall provide the Equipment necessary for the provision of the Project.
- 20.3. The Contractor shall maintain all items of Equipment in good and serviceable condition.
- 20.4. All Equipment shall be at the risk of the Contractor and SARF shall have no liability for any loss of or damage to any Equipment.
- 20.5. Any Equipment costing in excess of £2,000 which will yield continuous service for at least one year, for which SARF has reimbursed the Contractor will be the property of SARF. SARF shall have the right to require the Contractor either to pass such Equipment into SARF's possession or to dispose of it. In the latter event, the Contractor shall pass to SARF any monies realised by the disposal.

21. Intellectual Property

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

22. Infringement of Intellectual Property and Confidentiality between Parties

- 22.1. Each Party shall inform the other Party promptly if it becomes aware of any infringement or potential infringement of any of the Results, and the Parties shall consult with each other to decide the best way to respond to such infringement.
- 22.2. If the Parties fail to agree on a joint programme of action, including how the costs of any such action are to be borne and how any damages or other sums received from such action are to be distributed, then the Contractor shall be entitled to take action against the third party at its sole expense and it shall pay to SARF all damages or other sums received from such action, after deducting any amount of damages due to the Contractor for the infringements of any Intellectual Property rights that are owned by the Contractor and any amounts incurred by the Contractor by way of cost and reasonable expenses in taking such action. SARF shall have a right but no obligation to agree to be joined in any suit to enforce such rights subject to being indemnified and secured in a reasonable manner as to any costs, damages, expenses or other liability and shall have the right to be separately represented by his own counsel at his own expense.
- 22.3. SARF shall have the right to take over the conduct of any legal or court proceedings at any time at his request. In such event SARF will be responsible for the costs of the action from the date it takes over the conduct of such proceedings. SARF agrees not to discontinue any such proceedings without first consulting the Contractor. Should the Contractor wish to

continue the proceedings it shall be entitled to do so at its own expense and without any obligation on SARF to contribute to any costs incurred after the date SARF ceased to be involved in the conduct of the proceedings.

23. Infringement of Third Party Rights

- 23.1. If any warning letter or other notice of infringement is received by a Party, or legal suit or other action is brought against a Party, alleging infringement of third party rights in the manufacture, use or sale of any licensed product or use of any patents or Intellectual Property rights, that party shall promptly provide full details to the other Party, and the Parties shall discuss the best way to respond.
- 23.2. The Contractor shall have the right but not the obligation to defend such suit and shall have the right to settle with such third party, provided that if any such action or proposed settlement involves the making of any statement express or implied, concerning the validity of any Intellectual Property rights of SARF, the consent of SARF must be obtained before taking such action or making such statement.
- 23.3. SARF shall have the right to take over the conduct of any legal or court proceedings at any time at his request. In such event SARF will be responsible for the costs of the action from the date he takes over the conduct of such proceedings. SARF agrees not to discontinue any such proceedings without first consulting the Contractor. Should the Contractor wish to continue the proceedings it shall be entitled to do so at its own expense and without any obligation on SARF to contribute to any costs incurred after the date SARF ceased to be involved in the conduct of the proceedings.

24. Termination

- 24.1. In the event that the Contractor commits at any time any of the following defaults:
- 24.1.1. failure to progress the Project to the reasonable satisfaction of SARF or the Co-funders;
 - 24.1.2. breach of any of the warranties in condition 7;
 - 24.1.3. failure to provide any report in accordance with Appendix C – Reports Schedule;
 - 24.1.4. failure to effect the insurances required by condition 10;
 - 24.1.5. failure to comply with the inspection requirements of condition 11;
 - 24.1.6. failure to keep and/or make available for inspection the records required by condition 12;
 - 24.1.7. failure to provide the information required by condition 13;
 - 24.1.8. failure to comply with anti-discrimination legislation as required by condition 14;
 - 24.1.9. making any corrupt gifts or payments contrary to condition 16;
 - 24.1.10. making any public statement contrary to condition 18;
 - 24.1.11. failure to take appropriate steps to comply with the seventh data protection principle in accordance with condition 19;
 - 24.1.12. failure to comply with the requirements as to Intellectual Property rights in accordance with Appendix E – Intellectual Property Schedule;

SARF may issue a notice to the Contractor in accordance with condition 30.1, identifying the default and, where possible, requiring the Contractor to remedy that default.

- 24.2. If the Contractor fails to remedy the default within 30 days of the above notice, or if SARF reasonably considers that the default is not capable of remedy, SARF and the Co-funders may without prejudice to any other rights or remedies terminate this Agreement by written notice to the Contractor with immediate effect.
- 24.3. If the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, SARF may terminate this Agreement with immediate effect, by written notice to the Contractor.
- 24.4. The Contractor shall notify SARF immediately if, in relation to the Contractor's business:

- 24.4.1. a resolution is passed for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation and reconstruction not involving insolvency); or
- 24.4.2. any court makes an administration order or winding-up order, or the Contractor makes a composition or arrangement with creditors; or
- 24.4.3. an administrator, administrative receiver, receiver, or manager is appointed; or
- 24.4.4. possession is taken of any of the Contractor's assets under the terms of a floating charge.

24.5. The Contractor shall forthwith inform SARF and Co-funders in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status, including, where the Contractor is a company as defined in the Companies Act 1985, any change in "control" as defined in Section 416 of the Income and Corporation Taxes Act 1988.

24.6. On the occurrence of any of the events described in condition 24.4 or 24.5 SARF together with the Co-funders shall be entitled to terminate the Agreement by written notice to the Contractor with immediate effect.

24.7. In the event that the Co-funders:

- 24.7.1. fail to make any payment in accordance with Appendix B – Pricing Schedule; or
- 24.7.2. repudiate the Agreement;

SARF may issue a notice to the Contractor in accordance with condition 30.1, identifying the default of the Co-funders, and, without prejudice to any other rights or remedies, terminating the Agreement with immediate effect.

24.8. Without prejudice to the provisions of this condition, either Party may submit a request to the other Party to withdraw from the Agreement. The Agreement may be terminated by written agreement between the Contractor and SARF and the Co-funders at any time.

24.9. Where SARF is the sole funder, and without prejudice to the other provisions of this condition, SARF may, at any time, terminate the Agreement by giving the Contractor not less than 30 days written notice.

24.10. SARF may, during any notice period direct the Contractor:

- 24.10.1. to refrain from commencing the Project or any part of the Project;
- 24.10.2. to cease work immediately; or
- 24.10.3. to complete, in accordance with Agreement, any part of the Project, which shall be paid at the agreed price or, where no agreement exists as to price, a fair and reasonable price.

24.11. Except as provided in this Agreement, termination of the Agreement shall not affect:

- 24.11.1. any obligation or liability of any Party which has accrued at the date of termination
- 24.11.2. any of the provisions of this Agreement which are intended to continue to have effect after the Agreement has been terminated.

24.12. The sponsors (SARF and The Crown Estate) reserve the right to terminate the project if, for what ever reason, the project does not in the opinion of the sponsors appear to be delivering results which will permit at a practical level the objective and transparent assessment of significant environmental impact on benthos and water column of suspended shellfish culture at both farm and loch scale.

Formal assessment of project progress will be undertaken by the sponsors through a combination of brief monthly updates submitted by the project leader by email to the SARF Secretariat and project review meetings which will occur:

12 months after the project start date or on completion of Milestones 1, 2 & 3 which ever occurs earlier;

18 months after the project start date or on completion of Milestone 4 which ever occurs earlier.

These termination and reporting requirements are additional to and do not supersede or replace existing Terms and Conditions

25. Payment on termination

- 25.1. Without prejudice to any other rights or remedies of SARF or of the Co-funders, in the event of the Agreement being terminated:
- 25.1.1. by SARF in accordance with condition 24 by reason of the default of the Contractor;
or
 - 25.1.2. otherwise by reason of the Contractor's breach of the Agreement;
 - 25.1.3. neither SARF nor the Co-funders shall be under any obligation to make any payment to the Contractor for such period as is reasonable for SARF and the Co-funders to assess the loss and/or damage suffered as a result of the termination.
- 25.2. After such period, and except where the Agreement has been terminated pursuant to condition 24.7, SARF and the Co-funders may set off against any sums otherwise due to the Contractor, or recover as a debt, the amount of loss and/or damage SARF and/or the Co-funders have reasonably assessed as resulting from the termination of the Agreement. This amount will be limited to five times the contract price or the level of insurance retained by the Contractor as specified in 10.1 and 10.2 which ever is greater.
- 25.3. Where the Agreement is terminated by SARF in accordance with condition 24.8, the Contractor shall be entitled to claim from SARF reimbursement of all reasonable costs necessarily and properly incurred by him in relation to the orderly cessation of the Project, including any commitments, liabilities or other expenditure unavoidably incurred as a result of the termination of the Agreement, but excluding loss of profits. The liability of SARF under this condition shall not exceed the total sums payable for the Project, as set out in Appendix B - Pricing Schedule.
- 25.4. Any overpayment by SARF or Co-funders to the Contractor, whether of the agreed price or Value Added Tax, shall be a sum of money recoverable by SARF or Co-funders from the Contractor.

26. Transfer of rights and obligations

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

27. Rights of Third Parties

- 27.1. For the purposes of the Contracts (Rights of Third Parties) Act 1999, this agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

28. Waiver and variation

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

29. Severance

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

30. Notices

- 30.1. Any notice required to be given under, or any communication between the parties with the respect to any of the provisions of the Agreement shall be in writing in English and shall be deemed duly given if signed by or on behalf of a duly authorised officer of the party giving the notice and if left at, or sent by pre-paid registered or recorded delivery post, or by facsimile transmission or other means of electronic telecommunication in permanent written form to the address of the receiving party as specified in the Agreement (as or amended from time to time by due notice in writing to other party):-
- 30.1.1. Any such notice or other communication shall be deemed to have been given and received by the addressee:-
- 30.1.2. at the same time as it is left at the address of or handed to a representative of the party to be served;
- 30.1.3. by post on the day (not being a Sunday or public holiday 2 days following the date of posting);
- 30.1.4. in the case of a facsimile or email or other type of electronic telecommunication on the day following despatch.
- 30.2. In providing the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was correctly addressed and was posted, or that the facsimile or e-mail or other form of electronic communication was correctly addressed and was despatched and despatch of the transmission was confirmed and (in the case of a facsimile) confirmed as having been sent to the number above with all pages successfully transmitted.

31. Special Provisions

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

32. Entire agreement

- 32.1. The Agreement together with these Terms and Conditions and any variation made in accordance with condition 28 sets out the entire agreement between the parties and supersedes any prior agreement whether formal or informal and whether legally within the Agreement.

33. Legal Relationship

- 33.1. Nothing in this Agreement shall be construed so as to create a partnership or joint venture between the parties or have the effect of making any employee of any one party a servant of any of the other parties. Neither party shall act or describe itself as the agent of the

other nor shall it make or represent that it has authority to make any commitments on the other's behalf.

34. Dispute resolution

- 34.1. The relevant Parties shall in good faith attempt to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement.
- 34.2. If any such dispute cannot be resolved in accordance with condition 34.1 the dispute may, by agreement between the relevant parties, be referred to mediation in accordance with condition 34.3
- 34.3. The procedure for any such mediation shall be as follows:
 - 34.3.1. A neutral person ("the Mediator") shall be chosen by agreement between the relevant parties, alternatively, any party may within 14 days from the date of the proposal to appoint a mediator, or within 14 days of notice to any party that the chosen mediator is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a mediator.
 - 34.3.2. The relevant Parties shall within 14 days of the appointment of the Mediator meet with him or her to agree a timetable for the exchange of all relevant and necessary information and the procedure to be adopted for the mediation. If appropriate, the relevant Parties may at any stage seek from CEDR guidance on a suitable procedure.
 - 34.3.3. Unless otherwise agreed, all negotiations and proceedings in the mediation connected with the dispute shall be conducted in strict confidence and shall be without prejudice to the rights of the relevant parties in any future proceedings.
 - 34.3.4. If the relevant Parties reach agreement on the resolution of the dispute, that agreement shall be reduced to writing and shall be binding upon the relevant Parties.
 - 34.3.5. Failing agreement, any relevant Party may invite the Mediator to provide a non-binding but informative opinion in writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the dispute without the prior written consent of the relevant Parties.
 - 34.3.6. For a period of sixty days from the date of the appointment of the Mediator, or such other period as the relevant Parties may agree, none of the Parties to the dispute may commence any proceedings in relation to the matters referred to the Mediator.

35. Governing Law

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