

DATED

- (1) THE MEDICAL RESEARCH COUNCIL, AS PART OF UK RESEARCH AND INNOVATION, ACTING FOR THE NATIONAL CENTRE FOR THE REPLACEMENT, REFINEMENT AND REDUCTION OF ANIMALS IN RESEARCH

And

- (2) *[Please insert CONTRACTOR name as defined on page 3]*

PARTIES AND RECITALS

This Agreement is made between

- (1) **MEDICAL RESEARCH COUNCIL**, as part of United Kingdom Research and Innovation (also known as UK Research and Innovation) a body corporate pursuant to section 91 of the Higher Education and Research Act 2017 whose address is Polaris House, North Star Avenue, Swindon, SN2 1FL ("UKRI") (hereinafter called "MRC"); and
- (2) **[Please insert CONTRACTOR name as defined on page 3]** ("the Contractor")

WHEREAS:

1. The National Centre for the Replacement, Refinement and Reduction of Animals in Research whose office is at Gibbs Building 215 Euston Road, London NW1 2BE ("the NC3Rs") is an independent scientific organisation, tasked by Government with supporting the UK science base through the application of the replacement, reduction and refinement of the use of animals in research (the "3Rs"). Though it is represented legally by the MRC, which in turn is part of the executive non-departmental public body UK Research and Innovation, the NC3Rs is managed independently. To avoid doubt, references in this Agreement to the NC3Rs shall mean MRC as part of UK Research and Innovation.
2. The NC3Rs has initiated CRACK IT to facilitate the development of technologies with potential 3Rs benefits into new products and methodologies for the global biosciences research community (<http://www.crackit.org.uk>).
3. The NC3Rs is funding a Study entitled **[Study title]**, with project number **[project number]** via the Contractor to be delivered in a specific timeline and for a fixed cost of £ **[awarded cost]** ("**the Funding**") to meet deliverables set out in Schedule 1.
4. Following the completion of the Study, the Contractor submits a final report demonstrating the work undertaken during the Study.
5. The NC3Rs reserves the right to have reasonable access to inspect the records and financial procedures associated with this contract or to appoint any other body or individual for the purpose of such inspection.
6. The support in the form of the Study is provided as *de minimis* aid under COMMISSION REGULATION (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid ("*De Minimis* Aid Regulation").

IT IS HEREBY AGREED **as follows:**

Terms and conditions

DEFINITIONS

"3Rs"		means the Replacement, Refinement and Reduction of the use of animals in scientific procedures;
"Agreement"		means this Agreement concluded between the Parties including all sections to it;
"Approved Cost"		means the total cost agreed between the Parties for the Study as set out in Schedule 2;
"Collaborator"		means the organisations interested in collaborating with the Contractor. It is expected that collaborators will provide some level of in-kind contribution to support the development/validation of the study;
"Contractor"		means the organisation of the successful CRACK IT Solutions funding applicant;
"Contractor's Representative"		means a person authorised to represent the Contractor in respect of this Agreement;
"NC3Rs Representative"		means a person authorised to represent the NC3Rs in respect of this Agreement;
"Parties"		means the NC3Rs and the Contractor and includes their directors, employees and representatives and "Party" means either of the NC3Rs or the Contractor;
"Funding"		means the funding awarded for the Study;
"Background Property"	Intellectual	means in respect of each Party, any Intellectual Property owned by or licensed to that Party: (a) before the start date of this Agreement; and/or (b) which arises (or in the case of a licence commences) on or after the start date other than in the course of or in connection with the Study;
"Completion Date"		means the date on which the Study was completed;
"Confidential Information"		has the meaning given to it in Clause 9;
"Default"		means any breach by a Party to this Agreement of its obligations under this Agreement (including a fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of a Party to this Agreement or its employees, agents or Sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other;
"Deliverables"		means the Deliverables set out in Schedule 1;
"EIR"		means the Environmental Information Regulations 2004 and any subordinate legislation made under it, any amendment or re-enactment of any of them; and any guidance and/or codes of practice issued by the Information Commissioner, the Ministry of Justice (previously the Department for Constitutional Affairs and/or the Lord Chancellor) and/or Cabinet Office, or the Department for Environment Food and Rural Affairs or decisions made by other appropriate legislative bodies (including in each case its successors or assigns) in relation to such legislation from time to time, all as amended, supplemented and/or replaced from time to time;
"FOIA"		means the Freedom of Information Act 2000, all regulations made under it and any subordinate legislation made under them, any amendment or re-enactment of any of them; and any guidance and/or codes of practice issued

by the Information Commissioner, the Ministry of Justice (previously the Department for Constitutional Affairs and/or the Lord Chancellor) and/or the Cabinet Office, the Department for Environment Food and Rural Affairs or the Department for Communities and Local Government ("DCLG"), including the DCLG Local Government Transparency Code 2015, or decisions made by other appropriate legislative bodies (including in each case its successors or assigns) in relation to such legislation from time to time, all as amended, supplemented and/or replaced from time to time;

"FOIA Laws"

means the FOIA and/or the EIR (as applicable);

"Foreground Property"

Intellectual

means any and all Intellectual Property identified or developed in the course of or in connection with the Study or which subsists in any or all of the Study Results;

"Information"

has the meaning given under section 84 of the FOIA (<http://www.legislation.gov.uk/ukpga/2003/3/section/84>);

"Insolvency Event"

means where a party:

- (i) gives notice under section 84 Insolvency Act 1986 of or proposes or passes a resolution for, its winding up or in the case of a limited liability partnership proposes or determines that it will be wound up;
- (ii) has a winding up petition presented against it;
- (iii) has a winding-up order made or a notice of striking off filed in respect of it;
- (iv) has an administration order or an application for an administration order made in respect of it; or
- (v) has a notice of appointment of an administrator or a notice of intention to appoint an administrator filed in respect of it at any court;
- (vi) proposes, makes or is subject to:
 - (a) a company voluntary arrangement;
 - (b) a composition with its creditors generally;
 - (c) an application to a court of competent jurisdiction for protection from its creditors generally; or
 - (d) a scheme of arrangement under Part 26 of the Companies Act 2006;
- (vii) has a receiver or a provisional liquidator appointed over any of its assets, undertaking or income;
- (viii) ceases to trade or appears, in the reasonable opinion of the terminating Party, to be likely to cease to trade;
- (ix) is unable to pay its debts as they fall due;
- (x) the value of its assets are less than its liabilities, including its contingent and prospective liabilities;
- (xi) is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction;
- (xii) is the subject of any proceeding in any Member State of the European Union which is capable of recognition under the EC Regulation on Insolvency Proceedings (EC 1346/2000) or the EU Regulation on Insolvency Proceedings (Recast) (EU 2015/848); or
- (xiii) is the subject of an application for the recognition of a foreign insolvency proceeding under the Cross-Border Insolvency Regulations 2006 (SI 2006/1030);

"Intellectual Property"	means all intellectual and industrial property of any kind including patents, supplementary protection certificates, rights in know-how, registered trademarks, registered designs, unregistered design rights, unregistered trademarks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions;
"Partner"	means the NC3Rs and the Contractor;
"Parties"	means the NC3Rs and the Contractor and includes their directors, employees and representatives and "Party" means either of the NC3Rs or the Contractor;
"Recoverable Liabilities"	means all losses (including all direct, indirect and consequential losses), liabilities, all costs (on a full indemnity basis) including legal and other professional costs and costs of enforcement), damages and expenses that the indemnified party does or will incur or suffer, all claims or proceedings made, brought or threatened against the indemnified party by any person and all losses, (including all direct, indirect and consequential losses), liabilities, all costs (on a full indemnity basis) including legal and other professional costs and costs of enforcement) damages and expenses the indemnified party does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding
"Request for Information"	means a request for information pursuant to the FOIA Laws received by either the NC3Rs or the Contractor, where the Confidential Information of the other Party (including the content of this Agreement) is requested;
"Study"	means the Study in relation to which the Funding is awarded;
"Study Period"	means the period beginning on the Commencement Date and ending on the Completion Date or such earlier or later date as may be agreed between the Partners unless otherwise determined in accordance with the terms of the Agreement;
"Study Results"	means the information, Intellectual Property, materials and products arising out of or in connection with the Study, and other tangible or intangible results and data of, any research, development or other work undertaken by or on behalf of the Contractor;
"State Aid Law"	means the law embodied in Articles 107 - 109 of Section 2, Title VII, of the Common Rules on Competition, Taxation and Approximation of Laws-Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union;
"Sub-Contractor"	means a Third Party which has entered into an Agreement on business conditions with the Contractor, in order to carry out part of the work of the Study without the direct supervision of the Contractor and without a relationship of subordination;

1.1. The interpretation and construction of this Agreement shall be subject to the following provisions:

- 1.1.1 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;
- 1.1.2 the headings to Clauses are for ease of reference only and shall not affect the interpretation or construction of the Clauses;
- 1.1.3 references to Clauses are references to Clauses in the Section of the Agreement in which they appear, unless otherwise stated; and where the context allows, references to male gender include the female gender and the neuter, and the singular includes the plural and vice versa.

2. DURATION

This shall be deemed to have commenced on the date it has been signed by both Parties and if not terminated earlier shall continue until [XX XX XXXX].

3. ADMINISTRATION AND DIRECTION OF THE STUDY

The Contractor is responsible for:

- 3.1 managing and completing the Study by meeting the Study deliverables, within the agreed timeframe and budget.
- 3.2 ensuring that sufficient resources are allocated to the Study and that staff, and other resources, are deployed flexibly to ensure that the Study deliverables are met.
- 3.3 cooperating with the NC3Rs in all matters relating to the Study.
- 3.4 promptly informing the NC3Rs of any changes to key representatives and or staff which may affect their ability to deliver the Study.
- 3.5 ensuring that no Study funded activity should be used to further party political considerations, or for party political purposes, or for lobbying for political parties, nor should personal political views influence Study activity. Should this term be breached it may lead to the suspension, withdrawal or clawback of the Funding by the NC3Rs.
- 3.6 comply at all times with all Companies House filing requirements; and
- 3.7 notify the NC3Rs within fourteen (14) days if, during the term of the Agreement:
 - 3.7.1 there is a material change to the Contractor's ownership or management; or
 - 3.7.2 the Contractor becomes unable to deliver on its obligations under the Agreement.
- 3.8 the Contractor acknowledges and agrees that the NC3Rs is entering into this Agreement on the basis that the details of the Study are accurate and complete in all material respects and are not misleading.

4. PAYMENT SCHEDULE

- 4.1 The NC3Rs will release the Funding in full to the Contractor within 30 days of receiving a signed copy of this Agreement.
- 4.2 The Contractor will comply with the requirements in Schedule 2 and invoicing instructions received from the NC3Rs and will respond to any request for information from the NC3Rs and the UK Shared Business Services (UK SBS) to ensure payment can be set up promptly. The NC3Rs Finance Department will provide a purchase order number.
- 4.3 Payments to third parties are the responsibility of the Contractor who shall ensure that such payments are made promptly.
- 4.4 The NC3Rs may request at any time such evidence as may reasonably be required that the Contractor has used the amounts paid in accordance with satisfactory delivery of the Study. The Contractor shall maintain proper financial records relating to the Study throughout the Study duration and for a period of ten (10) years after the end of the Study.
- 4.5 The Contractor shall not make any material changes to the work relating to the Study described in this Agreement, without prior written approval being given by the NC3Rs.
- 4.6 The NC3Rs and the Contractors are jointly and individually responsible for maintaining detailed records with the information and supporting documentation necessary to establish that all the conditions set out in this Agreement comply with all applicable State Aid rules, as outlined below. Such records shall be maintained for ten (10) years following the granting of the aid and shall be made available to the European Commission within a period of 20 working days if requested.
- 4.7 The NC3Rs reserves the right to terminate this Agreement forthwith should the Contractor state in writing that it is unwilling or unable for any reason to continue with the Study or if, in the reasonable opinion of the NC3Rs that the Contractor is failing to achieve an acceptable standard in relation to the Study. If this occurs, the NC3Rs reserves the right to reclaim all or part of the Funding provided to the Contractor in relation to the Study.

4.8 The total amount to be paid by the NC3Rs to the Contractor shall not exceed the amount detailed in Schedule 2. Subject to these limits the Contractor is free to administer the Funding within the terms of this Agreement without further reference to the NC3Rs. There will be no extensions to the Study duration.

5. PUBLICITY

5.1 The NC3Rs publicises the results of funding schemes and competitions on its website, at events, on social media, in presentations and through engagement with the media. In accepting the Funding, the Contractor agrees to the NC3Rs use of the public description of the Study already provided for publicity purposes and any additional information reasonably requested by the NC3Rs, and agreed with by the Contractors, for publicising the Study and 3Rs benefits.

5.2 The contractor is actively encouraged to seek its own publicity. The NC3Rs may, however, have specific requirements on timing. If this happens, the NC3Rs will contact the Contractors to request that it defers any publicity until an agreed date.

5.3 During the Study, and prior to the publication of the Study outputs, the Parties shall not without the prior written consent of the other Parties release, or otherwise make available to third parties, information relating to the Agreement or the Study by means of any public statement in particular any press announcement or displays or oral presentations to meetings, such consent not to be unreasonably withheld.

5.4 The NC3Rs may develop Study case studies or 'success stories' (which are distinct from examples of projects used in press releases) in order to highlight the successes of the organisations we work with and publicise our activities and the benefits of our programmes. All material for case studies will be agreed with the Contractors before it is disclosed.

6. MONITORING AND REPORTING

6.1 The Contractor shall provide written reports as reasonably required by the NC3Rs on any aspect of the Study.

6.2 The Contractor shall allow such of its facilities, procedures and documentation as they relate to the Study to be submitted for scrutiny by the NC3Rs or its auditors in order to ascertain compliance with the relevant laws of the United Kingdom and the terms of this Agreement on dates and times to be agreed between the Contractor and the NC3Rs.

6.3 The Contractor shall retain and maintain all assets necessary to ensure continued compliance with the FOIA and all other primary legislation that may apply from time to time.

6.4 The NC3Rs uses an online system to collect information on the outputs and outcomes of research they fund and provides guidance on the use of the system and the timing and scope of reporting that is required. The Contractor must ensure that the system is used in accordance with the guidance provided. The NC3Rs also reserves the right not to consider further applications from a Contractor where the reporting requirements on previously awarded grants are not observed.

6.5 On Study completion, and for a period of up to five (5) years thereafter, the NC3Rs may wish to evaluate the impact of funding awarded to the Study. The Contractor is expected to comply with all reasonable requests for information made for this purpose.

7. FINAL REPORT AND FINAL EXPENDITURE STATEMENT

7.1 The Contractor is required to submit a final report to the NC3Rs within one (1) month of the Completion Date or the date of termination. It is the Contractor's responsibility to submit a final report. Failure to provide a report demonstrating the work undertaken during the Study will result in the Contractor being disqualified from participation in future CRACK IT competitions and all other competitions managed by the NC3Rs.

7.2 The Contractor shall provide a Final Expenditure Statement to the NC3Rs within one (1) month of the Completion Date or date of termination, demonstrating the expenditure incurred by Study. The NC3Rs may request at any time such evidence, as may reasonably be required, that the Contractor has used the amounts paid in accordance with this Agreement. For the avoidance of doubt, the only sum payable by the NC3Rs to the Contractor is the Funding.

8. STATE AID OBLIGATIONS

- 8.1 The Contractor shall not act in any way to undermine the NC3Rs' ability to comply with the terms of its CRACK IT Solutions scheme and the De Minimis Aid Regulation under which it operates for the purposes of compliance with the State Aid Laws and hereby confirms warrants and undertakes that it is eligible under the De Minimis Aid Regulation for the financial support provided by NC3Rs under the terms of this Agreement.
- 8.2 The Contractor further warrants and undertakes that the content of the completed de minimis aid declaration appended to Schedule 3 are correct and remain valid as at the date of this Agreement.
- 8.3 The Contractor must inform the NC3Rs of any other public funding applied for or awarded against the eligible costs covered by this Agreement. It is the responsibility of the Contractors to ensure that the cumulative total of public funding towards costs covered by the Funding remains fully compliant with the State Aid Law, including but not limited to the requirement of the De Minimis Aid Regulation.
- 8.4 No payments shall be made to the Contractor(s) if it becomes subject to a recovery order issued by the European Commission in accordance with the State Aid Law.
- 8.5 Further to clause 8.1 and 12, the NC3Rs may vary or withhold any or all of the payments and/or require repayment of the Funding already paid, together with interest from the date of payment at the applicable legislated rate to the date of repayment in full of such sums, if the NC3Rs or MRC is required to do so as a result of a decision by the European Commission arising from a breach of State Aid Law.
- 8.6 In the event of a requirement under clause 8.5 above for repayment of any element of the Funding, the Contractor shall pay such sums in full forthwith on receipt of a written notice from NC3Rs or MRC requesting such repayment.
- 8.7 The Contractor shall ensure that all subcontracts it enters into in respect of the Study, which utilise the Funding, are fully in compliance with the State Aid Law.

9. CONFIDENTIALITY

9.1 In this Agreement "**Confidential Information**" means, subject to Clause 9.2, any information (whether written, oral, in electronic form or in any other media) that is disclosed by or on behalf of a Party (the "**Discloser**") to the other Party (the "**Recipient**") or its representatives whether before, on or after the date of this Agreement and that relates (in whole or in part) to the Discloser or its business or the terms of or subject matter of this Agreement or any discussions or documents in relation to it, and in respect of such information each Party will be deemed to be a Recipient.

9.1.1 The Recipient's obligations under this Clause 9 will not extend to Confidential Information which:

9.1.1.1 the Discloser agrees in writing is not Confidential Information;

9.1.1.2 at the time of disclosure was in the public domain or subsequently enters into the public domain other than as the direct or indirect result of a breach of this Clause 9 by the Recipient or any of its representatives;

9.1.1.3 the Recipient can prove:

9.1.1.3.1 has been received by the Recipient (or one of its representatives) at any time from a third party who did not acquire it in confidence and who is free to make it available to the Recipient (or the relevant representative); or

9.1.1.3.2 was independently developed by the Recipient (or one of its representatives) without any breach of this Agreement.

9.1.1.3.3 must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Recipient making the disclosure, including any requirements for disclosure under the FOIA Laws.

9.2 The Recipient will at all times:

9.2.1 keep the Confidential Information secret and will only disclose it in the manner and to the extent expressly permitted by this Clause 9 or as otherwise permitted by the Discloser in writing or as required by law or by any governmental or regulatory authority (including any stock or investment exchange or listing authority or the Panel on Takeovers and Mergers);

9.2.2 use the Confidential Information solely for the purpose of performing its obligations and exercising its rights under this Agreement; and

9.2.3 keep the Confidential Information safe and secure and apply to it documentary and electronic security measures that match or exceed those the Recipient operates in relation to its own confidential information and will never exercise less than reasonable care.

10. ETHICS

10.1 The Contractor will ensure that any work carried out that is in any way connected with this Study is conducted in accordance with the NC3Rs guidelines as may be issued or referred to from time to time by the NC3Rs. The Contractor and its Sub-contractors must comply with the *Guidance on Responsibility in the Use of Animals in Bioscience Research* (www.nc3rs.org.uk/responsibility).

11. INTELLECTUAL PROPERTY

11.1 The Background Intellectual Property of each Party will remain the absolute unencumbered property of that Party. Neither Party will make any representation or do any act which may be taken to indicate that it has any right title or interest in or to the ownership or use of any of the Background Intellectual Property of the other Party except as expressly permitted by the terms of this Agreement. Save as expressly provided by this Agreement, neither Party has any right, title or interest in or to the Background Intellectual Property of the other Party.

11.2 The Contractor grants to the NC3Rs a perpetual, irrevocable, non-exclusive, worldwide, royalty free, freely assignable licence to use, copy, translate and amend such of the Contractor's Background Intellectual Property as is required for the purpose of exploiting the Foreground Intellectual Property. Such licence will include the right to grant sub-licences.

11.3 The NC3Rs grants to the Contractor a non-exclusive, worldwide, royalty free licence during the term of this Agreement to use, copy, translate and amend such of the NC3Rs' Background Intellectual Property as is required for the purpose of the Contractor performing the Study and its other obligations under this Agreement.

11.4 The Foreground Intellectual Property will be the property of and vest in the Contractor absolutely from the time of its creation. The NC3Rs hereby assigns with full title guarantee to all Foreground Intellectual Property created by the Contractor.

11.5 The Contractor grants to the NC3Rs a perpetual, irrevocable, non-exclusive, worldwide, royalty free, freely assignable licence to exploit, use, copy, translate and amend such of the Foreground Intellectual Property. Such licence will include the right to grant sub-licences.

11.6 Intellectual Property (IP) developed as part of the Study is owned by the Contractor. It is a condition of funding from the NC3Rs that outputs generated from this Funding must be made accessible to the rest of the bioscience sector under fair and reasonable terms.

11.7 It is a condition of the Funding that NC3Rs are notified of any patent filings and all filings must be pursued at the Contractor's cost and without unreasonable delay.

11.8 For the Study duration, the Contractor shall:

11.8.1 make commercially reasonable enquiries concerning pre-existing Third Party Intellectual Property that may adversely affect the achievement of the intended Study objectives and/or outcomes.

11.8.2 use its best endeavours to ensure that there are no impediments to the effective carrying out of the Study and/or the exploitation of the Study Results.

11.9 Access to Study outputs must be provided through publication and dissemination to third parties without unreasonable delay. Contractors that permit access to Study outputs via licencing routes must do so on fair and reasonable commercial terms.

11.10 Collaborators are also not joint owners of any IP arising from the Study. Where Collaborators provide in-kind contributions to the Study, the Collaborator(s) and the Contractor will need to detail arrangements for access to IP arising from the Study in a separate agreement.

12. TERMINATION

12.1 There may be occasions when the NC3Rs is required to terminate or reclaim the Funding in whole or in part. In doing so the NC3Rs shall at all times act reasonably and in consultation with the Contractors. The NC3Rs will use reasonable efforts to minimise the impact of any such actions on the ability of the Contractor to deliver the Study's outcomes as set out in this Agreement. In such circumstances, the NC3Rs will notify the Contractor and, where reasonable, work with the Contractor to resolve any underlying issues before taking such action.

- 12.2 The NC3Rs may at any time give notice in writing, terminating this Agreement without liability for any damage, loss or expenses arising as a result of or in connection with such termination if:
- 12.2.1 any approvals consent or licences required under this Agreement are not given unconditionally within 6 (six) months of the commencement of the Study Period;
 - 12.2.2 the Contractor is subject to an Insolvency Event;
 - 12.2.3 the Contractor is in Default under this Agreement and if:
 - 12.2.3.1 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;
 - 12.2.3.2 the Default is not capable of remedy;
 - 12.2.3.3 the Default is due to proven fraudulent misrepresentation of the performance and achievement of any objectives specified in Schedule 1 or as agreed with the NC3Rs during the course of the Study. In the event of default by fraudulent misrepresentation, all or part of the sums previously paid by the NC3Rs to the Contractor under this Agreement will be refunded by the Contractor;
 - 12.2.3.4 the Contractor fails to maintain satisfactory progress on the Study;
 - 12.2.3.5 there is any error in the Study proposal which significantly changes the expected benefits accruing from the Study or its exploitation;
 - 12.2.3.6 there is any change in the legal status or the actual or effective ownership or control of the Contractor; or
 - 12.2.3.7 the Funding or its use by the Contractor amounts to a breach of the State Aid Law, including but not limited to where a decision by the European Commission arising from a breach of State Aid Law requires repayment of part or all of the Award.
- 12.3 Termination of this Agreement by the NC3Rs under the preceding provisions of this Clause 12 shall (at the option of the NC3Rs) 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.
- 12.4 In particular, but not exclusively, the NC3Rs may require repayment of the Funding from the Contractor forthwith in the event of any of the following:
- 12.4.1 an overpayment of Funding has occurred whether disclosed by a report or otherwise and as soon as demanded by the NC3Rs or upon the Contractors becoming aware, whichever occurs first;
 - 12.4.2 It is found that a Contractor, knowingly or unknowingly, has provided false information associated with, or in support of, the Funding application;
 - 12.4.3 the Study is insufficiently resourced or managed to achieve delivery;
 - 12.4.4 fraud or the claiming against Funding of costs not actually incurred and paid;
 - 12.4.5 the use of Funding for purposes unconnected with the Study;
 - 12.4.6 the Funding or its use by the Contractor amounts to a breach of the State Aid Law; or
 - 12.4.7 the Contractors do not comply with, or observe, any other condition of this Agreement and, following notice by or on behalf of the NC3Rs, the breach is not remedied within 14 (fourteen) days.

13. WARRANTIES AND INDEMNITIES

- 13.1 The Contractor warrants and represents that:
- 13.1.1 the Contractor has full capacity and authority and all necessary licences, permits and consents to enter into and perform this Agreement;
 - 13.1.2 this Agreement is executed by a duly authorised Contractor's Representative;

- 13.1.3 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;
- 13.1.4 the Study will be carried out by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- 13.1.5 the Contractor will discharge its obligations hereunder with all due skill, care and diligence including, but not limited to, good scientific practice and (without limiting the generality of the foregoing) in accordance with its own established internal procedures;
- 13.1.6 the provision of the Study and the NC3Rs use thereof shall not, to its knowledge, infringe any intellectual property rights of any third party; and
- 13.1.7 the Contractor will use reasonable endeavours to ensure that all Sub-Contractors comply with all relevant legislation.

14. LIABILITY

- 14.1 Except as set out in clause 14.3 and 14.4, each Party shall have no responsibility or liability for any loss of or damage of any kind occasioned by or arising out of any work carried out in pursuance of this Agreement, unless occasioned by the negligence of that Party or its Sub-Contractors.
- 14.2 Nothing in this Agreement limits or excludes either Party's liability for:
 - 14.2.1 death or personal injury caused by its negligence; or
 - 14.2.2 any fraud or wrongdoing by that Party or any of its personnel.
- 14.3 Each Party shall indemnify the other Party for any injury, death, loss or damage occasioned by the negligence of the other Party, its servants or agents.
- 14.4 The Contractor will indemnify the NC3Rs against the Recoverable Liabilities, in each case arising out of or in connection with any claim or proceedings made, brought or threatened against the NC3Rs by any person for actual or alleged infringement of a Third Party's Intellectual Property rights and which arises out of or in connection with the use of the Contractor's Background Intellectual Property and/or the Foreground Intellectual Property.
- 14.5 The Contractor shall effect and maintain with a reputable insurance company, and make available to the NC3Rs on request, a policy or policies of insurance providing an adequate level of cover in respect of all risks, including employers liability insurance which may be incurred by the Contractor, arising out of the Contractor's performance of the Agreement.
- 14.6 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 Clause 14.4 above.

15. ASSIGNABILITY

- 15.1 The Contractor shall not sub-contract, transfer or assign the whole or any part of this Agreement without the prior written consent of the NC3Rs, whose consent shall not be unreasonably withheld, and may be subject to such terms and conditions as the NC3Rs may see fit to impose.
- 15.2 The Contractor shall be responsible for any acts and omissions in relation to the Study objectives of its Sub-contractors as though they were its own.

16. SEVERABILITY

- 16.1 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.
- 16.2 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.

17. WAIVER

- 17.1 The waiver by the NC3Rs of any right or remedy in respect of any breach of any term or condition or

requirement of this Agreement 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.

18. DISPUTE RESOLUTION

- 18.1 Any dispute between the Parties arising out of or in connection with this Agreement (other than in relation to the payment of any money)
- 18.1.1 shall in the first instance be referred to the Contractor's Representative and the NC3Rs Representative for resolution. The Parties agree to work together in good faith to reach an agreed settlement of any such dispute.
- 18.1.2 If within fourteen (14) days of the meeting of the Contractor's Representative and the NC3Rs Representative 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 NC3Rs or such other person as the NC3Rs sees fit and who shall have responsibility to settle such dispute on behalf of the NC3Rs. The Parties shall meet within seven (7) days of the reference to them of any dispute and shall work together in good faith to resolve the dispute.
- 18.1.3 If within fourteen (14) days the dispute has not been resolved, the dispute may be referred, by either Party, to mediation, the mediator to be agreed between the Parties. The fee for the appointed mediator shall be shared equally between the Parties.
- 18.2 Nothing in clause 18.1 shall preclude either Party from commencing an action in a court of law in England 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 18.1 before embarking on litigation.
- 18.3 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.
- 18.4 If the matter has not been resolved by an agreed ADR procedure within one (1) month of the initiation of such procedure, the dispute shall be referred to a single arbitrator to be agreed upon by the Parties or in default of Agreement within fourteen (14) days to be nominated by the president for the time being of the Chartered Institute of Arbitrators in accordance with the Arbitration Act 1996. The arbitration shall take place in London and shall be in accordance with the Arbitration Act 1996 and such arbitration rules as the Parties may agree or, in default of Agreement, in accordance with the rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference into this Clause.
- 18.5 The decision of the arbitrator shall be final and binding on the Parties.

19. FREEDOM OF INFORMATION ACT 2000 (FOIA)

- 19.1 Each Party acknowledges and agrees that:
- 19.1.1 the NC3Rs and the Contractor are respectively subject to the requirements of the FOIA Laws and may receive a Request for Information;
- 19.1.2 each Party that receives a Request for Information (the "**Request Recipient**") shall be responsible for determining at its absolute discretion whether any requested information (including Confidential Information of the other Party) is subject to any exemption and/or exception from disclosure and/or publication in accordance with the relevant provisions of the FOIA Laws or is to be disclosed in response to a Request for Information, and nothing in this Agreement shall remove or in any way limit that discretion of the Request Recipient;
- 19.1.3 it shall reasonably assist and cooperate with the Request Recipient to enable the Request Recipient to comply with its obligation under the FOIA Laws in relation to the Request for Information, including compliance with any time limits imposed under the FOIA Laws; and
- 19.1.4 in some circumstances it may not be possible or reasonable for the Request Recipient to provide notice of any Request for Information or consider the comments of the other Parties in relation to it, prior to responding to such a request.
- 19.2 Subject to Clause 19.1, where the Request Recipient receives a Request for Information:
- 19.2.1 the Request Recipient will notify the Party whose Confidential Information is the subject of the Request for Information (the "**Affected Party**") as soon as reasonably possible (and in any event

within five (5) working days of receipt), confirming what Confidential Information is being requested; and

19.2.2 the Request Recipient agrees to discuss in good faith with the Affected Party as to whether a relevant exemption/exception to the requirement to disclose the relevant Confidential Information under the FOIA Laws might be applicable, provided that the Affected Party makes itself available for such discussions within a reasonable time (and in any event five (5) working days of being notified of the Request for Information) so that the Request Recipient has a reasonable opportunity to consider the Affected Party's comments prior to the deadline for the Request Recipient to respond to the Request for Information.

19.3 Where a Party receives a Request for Information in relation to information or records held by the other Party on behalf of the Request Recipient, the other Party will within five (5) working days of the request (or such shorter time frame requested, where it is necessary to ensure the Request Recipient's compliance with FOIA Laws), provide the Request Recipient with a copy of such information in the form reasonably requested.

19.4 Each Party 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 NC3Rs or Contractor as the case may be to inspect such records as requested from time to time.

20. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

21. ENTIRE AGREEMENT

21.1 This Agreement constitutes the entire Agreement between the Parties relating to its subject matter:

21.1.1 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.

21.1.2 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 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.

22. LAW

22.1 This Agreement shall be considered as a contract made in England and be construed in accordance with English Law. The English courts will have exclusive jurisdiction to deal with any dispute which has arisen or may arise out of or in connection with this Agreement, except that either Party may bring proceedings for an injunction in any jurisdiction.

SIGNATURES

Signed by the duly authorised signatory for and on behalf of the Contractor

(Title)

Date

Signed by the duly authorised signatory for and on behalf of MRC and the NC3Rs

(Chief Executive, NC3Rs)

Date

SCHEDULE 1: DELIVERABLES

[Insert agreed Deliverables]

SCHEDULE 2: FINANCIAL ARRANGEMENTS

PAYMENT SCHEDULE

The Commencement Date is: []

The Completion Date is:[]

The Approved Cost is: []

The NC3Rs will use all reasonable endeavours to pay the total amount specified in the attached Agreement within 30 days of receiving a signed copy of the Agreement. If payment will not be made within this timeframe the NC3Rs will inform the Contractor of this. Time shall not be of the essence for such payment.

Contract terms are fixed; no negotiation will be entered into.

The Contractor should respond to any request for information from the NC3Rs and the UK Shared Business Services (UK SBS) to ensure payment can be set up promptly.

Payments cannot be made until this information has been received.

The NC3Rs Finance Department will provide a purchase order number and invoicing instructions.

The total amount to be paid by the NC3Rs is specified in the attached Agreement in British Pounds Sterling. All payments under this Agreement shall be in British Pounds Sterling (GBP) only.

For applications from organisations based outside of the United Kingdom, please note that a European Union (EU) reverse charge of VAT will be applied to your award. This will be charged at 20% and will need to be taken into consideration when costing your application, as the maximum amount that will be paid out, inclusive of VAT and EU Reverse Charges, will not exceed the total amount offered for the Study under the CRACK IT Solutions scheme.

SCHEDULE 3

De Minimis Aid declaration

[Completed declaration to be appended here]