

COST SHARING AGREEMENT

FOR

SERVICES

between

Royal Holloway and Bedford New College

and

Royal Holloway Enterprise Limited

THIS COST SHARING AGREEMENT is made this day of 2010
by and between

Royal Holloway and Bedford New College (“RHUL”) whose registered office is at
Royal Holloway and Bedford New College, Egham Hill, Egham, Surrey, TW20 0EX

and

Royal Holloway Enterprise Limited (“RHEL”) a company registered in England under
number 2667639 and whose registered office is at Egham Hill, Egham, Surrey, TW20
0EX

Whereas:

- A. RHEL wishes to participate in certain services to assist in the running of their
business operations;
- B. RHUL is willing to provide such services on the terms of this Agreement.

Now it is agreed as follows:

PART 1 - DEFINITIONS AND SCOPE OF AGREEMENT

Clause 1 - Definitions

In this Agreement:

- (1) "Activity or Activities" means one or more of the types of activities described in
Appendix 1 which is or may be carried on by RHEL.
- (2) "Agreement" means this Agreement and all Appendices or Addenda attached to
this Agreement or added to this Agreement from time to time.
- (3) "Cost" in relation to an Activity undertaken by RHUL or other Service Provider
means the total cost of such Activity namely (i) those costs referable to it which
can be allocated directly, including any directly-related payment to RHUL staff
and (ii) an allocation of direct salary and labour burden costs determined by time
writing or estimation of time and effort, where the Activity is within normal
duties, determined in accordance with the RHUL Consultancy Policy, and (iii)
indirect costs attributable to the direct labour costs for activities which utilise
RHUL facilities (such as laboratories), but shall not include any element for profit.
- (4) "Default Rate" means:

With respect to sums in pounds sterling the one Month London Interbank Offered
Rate (LIBOR) for Pounds Sterling plus two percent (2%) as appears on the screen
display designated as "Page 3750" on the Telerate Service (or such other screen
display or service as may replace if for the purpose of displaying British Bankers'
Association LIBOR Rates for Sterling deposits in the London Interbank Market)
at or about 11.00 a.m.

- (5) "Direct Services" means the Services provided under this Agreement as defined in Clause 4.
- (6) "Effective Date" means the date this Agreement becomes effective.
- (7) "Fixed Costs" means Costs that are incurred in the delivery of a minimum level of Indirect Services irrespective of the volume of Activities.
- (8) "Indirect Services" means the Services provided under this Agreement as defined in Clause 4.
- (9) "Period" means twelve consecutive periods of four, five and then four weeks commencing on 1st August in each Year, as adjusted by RHUL.
- (10) "Quarter" means four consecutive periods of thirteen weeks commencing on 1st August in each Year, as adjusted by RHUL.
- (11) "Services" means any advice, services, supplies, assistance or information provided under this Agreement as Indirect or Direct Services as defined in Clause 4.
- (12) "Service Provider" means any company performing any Direct or Indirect Services described in this Agreement and delegated by RHUL under Clause 8(1) by virtue of its resources or special expertise.
- (13) "VAT" means value added tax, goods and services tax, sales tax, services tax and other indirect taxes chargeable on the provision of the Services.
- (14) "Variable Costs" means Costs that are incurred as a direct result of the volume of Activities.
- (15) "Year" means a financial accounting period of twelve consecutive Months commencing on 1st August.

Clause 2 - Scope of the Agreement

- (1) The purpose of this Agreement is to set out the basis on which RHUL and any other Service Providers to whom performance is delegated under Clause 8(1) shall make available Services to RHEL that are relevant to the Activities covered by this Agreement.
- (2) RHUL and any Service Providers or other persons, to whom performance is delegated under Clause 8(1) act under this Agreement as independent consultants and, except as otherwise agreed, shall not be agents of RHEL as further specified in Clause 15. RHUL and Service Providers provide the Services in an advisory capacity to RHEL for RHEL to consider and to decide whether to make use of them.

- (3) Nothing in this Agreement shall be deemed to constitute a partnership between the parties to this Agreement. The relationship which subsists between the parties is that which arises under a cost sharing agreement.
- (4) RHUL shall exercise due diligence in performing this Agreement. RHUL shall exercise all reasonable endeavours to ensure other Service Providers to whom performance is delegated under Clause 8(1) perform to the same high standard.

PART 2 - SERVICES

Clause 3 - Services to be provided

- (1) RHUL will, subject to the terms of this Agreement, provide RHEL with Services (more fully described in Appendix 2) relevant to it for the Activities covered by this Agreement.
- (2) Where RHEL carries on more than one Activity, then for the purpose of this Agreement RHUL's obligation to provide Services shall be limited to such Activities as are described in Appendix 1 to this Agreement as amended from time to time.

Clause 4 –Direct and Indirect Services (“Services”)

- (1) RHUL will provide Services consisting of Direct and Indirect Services to RHEL.
- (2) Direct Services will be provided by RHUL to RHEL for the purpose of direct delivery of the Activities as described in Appendix 1.
- (3) Indirect Services will be provided by RHUL to RHEL for the purpose of supporting and managing the delivery of the Activities as described in Appendix 1.
- (4) Services will be provided by telephonic, facsimile and other electronic communications, for speedy and effective understanding and by hard copy where specifically requested, as well as through visits and other interchanges between members of the offices of the relevant staff.
- (5) Appendix 1 sets out the Activities in relation to which Services are provided under this Agreement. The parties may by mutual written agreement add Activities to Appendix 1 or delete Activities from Appendix 1.
- (6) Appendix 2 sets out a description of the types of Direct and Indirect Services that are provided under this Agreement.

Clause 5 – Cost Sharing for the Services

- (1) In consideration of the Services rendered to it, RHEL shall pay to RHUL the amounts which represents RHEL's share in the Cost to RHUL of the Services provided, for the Year concerned as executed in the field of RHEL's Activities. Further details are set forth in Appendix 3.

- (2) In addition to this payment RHEL shall reimburse RHUL, and RHUL shall invoice RHEL from time to time, for additional costs incurred by RHUL in connection with performing the Services under this Agreement, including but not limited to travelling and hotel expenses and reasonable living allowances of RHUL's and/or any Service Provider's personnel rendering the Services.

PART 3 - PAYMENTS

Clause 6 - Payment Conditions and Taxes

- (1) RHUL shall invoice RHEL for the Services at the times and as provided in Appendix 4.
- (2) Any amounts payable under this Agreement should, where applicable, be subject to the addition of VAT on production of a proper VAT invoice.
- (3) RHEL shall pay to RHUL within 30 days of date of invoice, all amounts due hereunder in the manner, at a place and into an account to be nominated by RHUL.
- (4) RHUL shall charge its Cost in Pounds Sterling. RHUL shall, unless otherwise agreed, issue invoices expressed in such currency, and settlement shall be made in the currency as expressed on the invoice.
- (5) RHUL reserves the right to charge interest on any overdue payment from the date it falls due until such time that RHUL has received the payment from RHEL, at the Default Rate applicable on the date the payments fall due.
- (6) In the case RHEL disagrees with an amount invoiced, RHEL shall advise RHUL in writing of the amount being disputed and the reason why RHEL considers the charge not properly made. RHUL may, at its discretion, permit RHEL to defer payment of the disputed item, and only that item, if the disagreement cannot be resolved before the normal due date.

PART 4 - GENERAL PROVISIONS

Clause 7 – Limitation of Liability

- (1) If any Services under this Agreement are negligently performed or omitted then so far as may be reasonably practicable RHUL will cause such Services to be correctly performed at no extra expense to RHEL, and this shall be RHEL's sole remedy against RHUL.
- (2) Neither party shall be liable to the other for loss of use of property, loss of profits, loss of products, interruption or any indirect or consequential damages resulting from or arising out of this Agreement.

- (3) In any event the maximum liability of both parties to each other under or otherwise in connection with this Agreement or its subject matter is equal to the total sums payable by RHUL to RHEL under Clause 6.

Clause 8 - Extent of Undertakings

- (1) Notwithstanding any provision of this Agreement, the provision of Services which RHUL undertakes to provide under the terms of this Agreement shall extend only to that which RHUL or the applicable Service Provider is able and free to provide and which RHUL or the applicable Service Provider, can render with its existing employees, equipment, organisation and facilities. Furthermore, if RHUL is in a position to provide any item of Services under this Agreement only provided that certain conditions, other than those set forth in this Agreement, are met, then RHUL may make the provision of such item additionally subject to such terms and conditions.
- (2) Subject to the foregoing, RHUL shall use all reasonable endeavours to provide RHEL with the Services set out in this Agreement and shall promptly notify RHEL if it is unable to provide any Service requested by RHEL under this Agreement and shall state the reason for such inability.
- (3) Nothing in this Agreement shall oblige RHUL to provide RHEL with advice, assistance, services, information, materials or rights or licences if such provision by RHUL is restricted by secrecy or other contractual obligations at the time in question.

Clause 9 - Force Majeure

- (1) Neither party shall be liable for breach of this Agreement as a result of failure to fulfil any term of this Agreement, other than a failure by RHEL to pay any sum due to RHUL under the provisions of this Agreement, if fulfilment has been delayed, hindered or prevented by circumstances beyond the reasonable control of the party in question.
- (2) The party whose performance of this Agreement is affected shall notify the other party as soon as reasonably practicable of the occurrence of such a circumstance together with an estimate of when performance can be resumed (which estimate shall be updated from time to time) and the party giving such notice shall be excused from the non-performance or delayed performance, as the case may be, of this Agreement until such circumstance ceases to apply.

Clause 10 - Assignment and Delegation

- (1) Neither party shall assign its rights or transfer its obligations without the prior written consent of the other party.
- (2) RHUL may at its discretion procure from any third party certain Services which it renders under this Agreement, or may delegate to any Service Provider or other third party the performance of its rights or obligations under this Agreement, in order to assist RHUL in the efficient execution of this Agreement provided that

the person or persons to whom delegation is made shall be as capable of rendering Services as RHUL or another Service Provider.

Clause 11 - Duration and Termination

- (1) The Effective Date of this Agreement is 1st August 2008
- (2) Either party may terminate this Agreement by giving the other party not less than 3 months' prior written notice to that effect.
- (3) When RHUL has not received any payment due from RHEL to RHUL under this Agreement in the manner as indicated therein within a period of 12 months of the date such payment fell due, RHUL may suspend the provision to RHEL of any Services under the terms of this Agreement.
- (4) RHUL may immediately terminate this Agreement:
 - (a) At any time there is a reduction or dilution in the equity of RHEL held by RHUL;
 - (b) upon RHUL for whatever reason not having received any payment due from RHEL to RHUL under this Agreement in the manner indicated therein within a period of 12 months of the date such payment fell due;
- (5) The termination of all or part of this Agreement shall, except as specifically stated otherwise in this Agreement, not prejudice any obligations, rights or remedies accruing before, at or in consequence of its termination or any proceedings with respect to any obligations, rights or remedies including proceedings by way of arbitration arising out of or relating to this Agreement.

Clause 12 - Notices

All notices and other communications to be sent by either party to the other shall be sent to the other party at its address as stated at the outset of this Agreement, provided that either party may at any time designate a different address to which notices and other communications are thenceforth to be sent.

Clause 13 - Arbitration and Applicable Law

- (1) The parties shall endeavour to resolve any dispute, claim or controversy which may arise out of or in connection with this Agreement or the application, implementation, validity, breach or termination thereof through friendly consultations between them. Such consultations shall commence upon the written notification to that effect by one party to the other party.
- (2) This Agreement will be governed by and construed in accordance with English Law. The English Courts shall have exclusive jurisdiction to deal with any dispute which has arisen or may arise out of or in connection with this Agreement.

Clause 14 - Entirety of Agreement and Amendment

- (1) This Agreement constitutes the entire agreement between the parties with reference to its subject matter and as of the Effective Date supersedes any existing agreement, contract, representation and understanding (oral or written) between them with respect to its subject matter. It is also the understanding of the parties that as of the Effective Date, the Services to RHEL in the field of Activities covered by this Agreement shall only be provided under this Agreement, and that as of the Effective Date any existing agreement, contract, representation and understanding (oral or written) between RHEL for the Services in the field of Activities covered by this Agreement shall be superseded by this Agreement.
- (2) No amendment, alteration, modification or waiver of any of the provisions of this Agreement, or the rights or obligations of the parties, shall be valid and effective unless it:
 - (a) is agreed to and signed by each of the parties concerned; and
 - (b) Specifically refers to this Agreement.

Clause 15 - No Agency or Partnership

Nothing contained in this Agreement and no actions taken by the parties under this Agreement shall constitute a partnership, joint venture, association or other co-operative entity between the parties to this Agreement. In the provision of Services the parties are acting independently and not as agents of each other. The relationship which subsists between the parties is that which arises under a cost sharing agreement.

Clause 16 - Severability

Each provision of this Agreement is to be construed separately and, even if the whole or any part of any provision proves to be illegal or unenforceable in any jurisdiction, the other provisions of this Agreement, and the remainder of the illegal or unenforceable provision, will continue in full force and effect in that jurisdiction, and the legality, validity and enforceability of that provision in any other jurisdiction will not be affected.

Clause 17 - Headings

The headings of Clauses and sub-clauses are inserted for convenience only and shall not affect the meaning or operation of this Agreement.

IN WITNESS WHEREOF the parties have signed this Agreement in two originals constituting one instrument.

For: Royal Holloway and Bedford New College, the day of 2011

.....
Name(s):

For: Royal Holloway Enterprise Limited, the day of2011.

.....
Name:

APPENDIX 1 -Type of Activities covered by this Agreement

RHEL will require Services from RHUL to assist in carrying out, and supporting and managing Activities including Consultancy, Technical Services and operation of an Enterprise Centre and any other Activities as agreed between the parties from time to time.

APPENDIX 2 –Services

RHUL will provide Direct and Indirect Services to assist in carrying out all Activities covered by this Agreement and any other Activities as agreed between the parties from time to time.

Direct Services will be provided for the direct delivery of the Activities.

Indirect Services will be provided for the support and management of the delivery of the Activities.

EXAMPLES OF DIRECT SERVICES:

- CONSULTANCY
- TECHNICAL SERVICES

EXAMPLES OF INDIRECT SERVICES:

- FINANCE (including payroll, credit control, financial and management accounting)
- HUMAN RESOURCES (including recruitment, training, and advice)
- INFORMATION TECHNOLOGY
- MANAGEMENT
- ENTERPRISE SERVICES (including contract negotiation and preparation)

APPENDIX 3 - Details of Cost Sharing Allocation Method

RHEL will bear its share of the costs below for different Activities as described herein. The costs consist of all the Costs of the Services (as defined in Clause 1 of this Agreement) incurred by RHUL for all Services rendered under this Agreement.

ALLOCATION METHOD FOR COSTS FOR DIRECT SERVICES

1. Staff Costs in Academic and Academic Support: annual fixed cost of salary, employer's national insurance and pension contributions of relevant personnel calculated from estimates of time allocated to direct delivery of RHEL Activities. If delivery of RHEL Activities is determined under the RHUL Consultancy Policy to be outside normal duties, an additional payment may be made to the member of staff, and this is the direct staff cost of the Service. If such a payment is waived in advance of the delivery of the Service, then no cost will be allocated.
2. Actual receipted travel and subsistence expenses incurred in the course of the direct delivery of Activities
3. Laboratory consumables and space costs incurred in the course of direct delivery of Activities.

ALLOCATION METHOD FOR COSTS FOR INDIRECT SERVICES

Fixed Costs:

1. Staff Costs in Management, Finance, HR and Research and Enterprise: annual fixed cost of salary, employer's national insurance and pension contributions of relevant personnel calculated from estimates of time allocated to support and management of RHEL Activities.
2. Insurance: annual fixed cost based on pro rating of the relevant group insurance policies relative to income of RHUL and RHEL
3. Space Costs: fEC Estates non-laboratory cost per FTE as calculated in (1) above.
4. Enterprise Centre Costs: excluding costs paid directly by occupants such as cleaning and telephone costs.

Variable Costs:

1. Staff costs in Finance and Research and Enterprise equivalent to a mutually agreed percentage of the annual income of RHEL, initially 10%, and varied according to an annual review of the workload arising from the mix of income.

APPENDIX 4 – Payment Conditions

Services rendered by RHUL

- (1) Each Period RHUL shall invoice RHEL for the Variable Costs incurred in the delivery of Activities.
- (2) Each Quarter RHUL shall invoice RHEL provisionally for its share in the Fixed Costs, as determined in accordance with Appendix 3. The provisional invoice for any Quarter shall be for the estimated Fixed Costs for the Quarter.
- (3) Each Year RHUL shall send RHEL its invoice in respect of RHEL's actual share in the Fixed and Variable Costs for such Year, from the amount of which shall be deducted any amounts charged to and paid by RHEL in respect of RHUL's provisional quarterly invoices for the Year concerned.
- (4) Where Services are provided by RHUL for less than a Year, then any share of Cost payable under this Agreement shall be subject where applicable to pro-rating to ensure it is proportional to the length of time in that Year that Services were actually provided.