DATED 2014

(1) THE UNIVERSITY OF SHEFFIELD

- and -

(2) [COMPANY]

SECONDMENT AGREEMENT
THIS AGREEMENT is made on 2013

BETWEEN

(1) THE UNIVERSITY OF SHEFFIELD, incorporated by Royal Charter (company number RC000667) whose address is Western Bank, Sheffield S10 2TN ("SHEFFIELD"); and

(2) [COMPANY], [incorporated by Royal Charter (company number ◆) whose address is ◆| OR [a company [registered in England and Wales under number ◆ whose registered office] OR [incorporated under the laws of ◆ [country] whose principal place of business is at ◆] ("COMPANY").

BACKGROUND

A The parties wish to make provision for the Employee(s) of SHEFFIELD to be seconded by SHEFFIELD to COMPANY for the purpose of providing the Services.

B SHEFFIELD agrees to second the Employee(s) to COMPANY on the terms and conditions set out in this Agreement.

IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

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

"Agreement" means this agreement and any document referred to, completed or to be completed in accordance with its provisions;

"Employee(s)" means the employee(s) of SHEFFIELD set out in schedule 1;

"Fee" has the meaning set out in schedule 3;

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

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

"Secondment Period" means the period during which the Employee(s) shall provide the Services to COMPANY set out in schedule 1;

"Services" means the services to be provided by the Employee(s) to COMPANY set out in schedule 2;

"Total Employment Costs" means all salaries, bonus payments and all other costs and expenses including insurance, employer's liability insurance, pension contributions, holiday and sickness pay, tax and both employer's and employees' National Insurance contributions;

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

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

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

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

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

Unless terminated earlier in accordance with the provisions of this Agreement, this Agreement shall come into force on the date of this Agreement and shall continue in force for the Secondment Period.

3. REPLACEMENT EMPLOYEE(S)

If at any time during the Secondment Period, the Employee(s) ceases or cease to be employed by SHEFFIELD for any reason, SHEFFIELD's obligation to second such Employee(s) will cease immediately, but SHEFFIELD's obligation to second other Employees (if any) will continue and SHEFFIELD shall be required to second a suitably qualified and experienced replacement employee or employees to COMPANY.

4. SERVICES

4.1 SHEFFIELD will second the Employee(s) to perform the Services set out in schedule 2.

4.2 In accordance with schedule 1, the Employee(s) will devote such of their time, attention and skill as may be required by COMPANY from time to time for the proper performance of the Services.

4.3 During the Secondment Period and at such time as the Employee(s) is/are providing Services to COMPANY the Employee(s) will be responsible to and act in accordance with the instructions of COMPANY.

5. DUTIES OF COMPANY

5.1 Unless otherwise agreed SHEFFIELD will second the Employee(s) to COMPANY on the terms and conditions under which they are employed by SHEFFIELD (copies of which will be provided by SHEFFIELD at the COMPANY’s request). SHEFFIELD will notify COMPANY of any changes to the terms and conditions which will or might affect this Agreement or the secondment of the Employee(s) pursuant to this Agreement.

5.2 COMPANY agrees that it will observe the terms under which the Employee(s) is/are employed by SHEFFIELD as if it were the employer of the Employee(s), and that it will use all reasonable endeavours not to do or omit to do anything which would cause SHEFFIELD to breach any of its obligations to the Employee(s).
5.3 Throughout the Secondment Period, COMPANY shall on SHEFFIELD's reasonable request report to SHEFFIELD in writing on the conduct and progress of the Employee(s).

5.4 Throughout the Secondment Period, COMPANY shall notify SHEFFIELD within five (5) days of any employment-related issue(s) including with the conduct and progress of the Employee(s) and any grievance raised by the Employee(s). Any action taken will be in accordance with the employment terms and conditions of SHEFFIELD, and any formal action will be taken by SHEFFIELD with the COMPANY.

6. DUTIES OF SHEFFIELD

6.1 The Total Employment Costs of the Employee(s) shall be paid direct by SHEFFIELD during the Secondment Period.

6.2 SHEFFIELD shall be responsible for making appropriate PAYE deductions for income tax and national insurance contributions and any non-statutory deductions from pay and shall indemnify COMPANY against any claim or demands which may be made by the relevant authorities against COMPANY in respect of income tax or national insurance contributions relating to the provision of the Services of the Employee(s) under this Agreement.

6.3 SHEFFIELD shall inform COMPANY in writing of any changes to the Total Employment Costs of the Employee(s) at least one (1) month prior to such changes taking effect. Following notification, the parties contract representatives shall meet to agree any changes to the Fee. In the absence of agreement the matter shall be referred to arbitration in accordance with the provisions of clause 15.

6.4 SHEFFIELD will procure that the Employee(s) perform the Services with reasonable skill and care.

7. BASIS OF CHARGES

7.1 In consideration of the provision of the Services of the Employee(s), COMPANY will pay to SHEFFIELD the Fee, together with any VAT payable. VAT will be charged at the rate applicable at the time of charging.

7.2 SHEFFIELD will render invoices in arrears to COMPANY in respect of the Fee for the periods set out in schedule 3 and COMPANY will pay the Fee within thirty (30) days of receipt of an invoice.
7.3 SHEFFIELD may offset any amount owing to it from the COMPANY against any amount owed to the COMPANY by SHEFFIELD.

7.4 If the Employee(s) is/are unable to provide the Services for any reason SHEFFIELD shall not be entitled to receive any Fee or other fees in respect of the period of inability or unavailability, unless a suitable replacement is provided in accordance with Clause 3.

8. **EMPLOYEE'S EXPENSES**

COMPANY will reimburse directly to the Employee(s) any out-of-pocket expenses properly incurred by the Employee in relation to the performance of Services for COMPANY during the Secondment Period. All claims for expenses must be accompanied by proper documentary proof of the expenses, such as receipts. The maximum amount of expenses which an Employee may claim in any three-month period shall be as set out in schedule 3 (inclusive of VAT) ("Maximum Expenses"). COMPANY’s prior written consent shall be sought for all expenditure above the Maximum Expenses.

9. **HEALTH & SAFETY**

COMPANY will comply and will procure that the Employee(s) comply with the provisions of the Health & Safety at Work Etc Act 1974 ("HSWA") and any statutory re-enactment or modification of HSWA and any rules or regulations made pursuant to HSWA in so far as the same concern the Employee(s). COMPANY will also cooperate with SHEFFIELD in respect of any action to be taken in relation to the Employee(s) in order to fulfil its duties under HSWA.

10. **NO EMPLOYMENT**

Nothing in this Agreement shall create nor be deemed to create any relationship of employer or employee between COMPANY and the Employee(s).

11. **TERMINATION**

11.1 COMPANY may terminate this Agreement with immediate effect by written notice to SHEFFIELD on or at any time after the occurrence of any of the following events:

11.1.1 the Employee(s) or any of them cease to be employed by SHEFFIELD for whatever reason and suitable substitution under Clause 3 is not agreed; or
11.1.2 the Employee(s) or any of them commits any act or makes any omission (whether or not in connection with the secondment) which would entitle COMPANY to dismiss him summarily if he were employed by COMPANY on the terms and conditions under which he is employed by SHEFFIELD; or

11.1.3 the Employee(s) or any of them conducts himself in a manner prejudicial to the business and interests of COMPANY (whether or not in connection with the secondment).

11.2 A party ("Initiating Party") may terminate this Agreement with immediate effect by written notice to the other party ("Breaching Party") on or at any time after the occurrence of any of the following events:

11.2.1 the Breaching Party being in material breach of an obligation under this Agreement and, if the breach is capable of remedy, failing to remedy the breach within thirty (30) days of receipt of written notice from the Initiating Party giving details of the breach and requiring the Breaching Party to remedy the breach;

11.2.2 the Breaching Party passing a resolution for its winding up or a court of competent jurisdiction making an order for the Breaching Party to be wound up or dissolved or the Breaching Party being otherwise dissolved;

11.2.3 the appointment of an administrator of or, the making of an administration order in relation to the Breaching Party or the appointment of a receiver or an administrative receiver of, or an encumbrancer taking possession of or selling, the whole or part of the Breaching Party's undertaking, assets, rights or revenue;

11.2.4 the Breaching Party being unable to pay its debts or being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

11.2.5 the Breaching Party entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or takes steps to obtain a moratorium or makes an application to a court of competent jurisdiction for protection from its creditors.
11.3 For the avoidance of doubt termination of this Agreement pursuant to this clause 11 in respect of one or more of the Employee(s) will not, unless otherwise agreed, terminate this Agreement in respect of the other Employee(s) (if any).

12. CONSEQUENCES OF TERMINATION

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

12.2 Upon termination of this Agreement, howsoever occurring, the Employee(s) shall automatically revert to employment with SHEFFIELD in accordance with his/her terms and conditions of employment, and shall have no rights or claims against COMPANY in respect of such termination.

13. INDEMNITY

13.1 The parties agree that during the Secondment Period the Employee(s) will be deemed to be the agent(s) of COMPANY and COMPANY will be liable to SHEFFIELD for any of their acts, omissions or errors of judgement.

13.2 COMPANY will indemnify SHEFFIELD on a continuing basis against all and any claims, rights, remedies, costs, expenses or proceedings of whatever nature whether arising at common law or under statute against SHEFFIELD as a result of any such acts or omissions of the Employee(s).

13.3 SHEFFIELD shall indemnify COMPANY in respect of any claim that may be made by the Employee(s) following termination of the Agreement unless such claim arises out of any negligent act or omission by COMPANY.

14. INTELLECTUAL PROPERTY

The parties agree that Intellectual Property rights generated, conceived, apprehended or learned by the Employee(s) (or any of them) undertaking their duties for COMPANY or providing the Services (whether alone or together with any other person or persons) shall be the exclusive property of SHEFFIELD.
15. **DISPUTE RESOLUTION**

15.1 If any dispute arises between the parties under or in connection with this Agreement either party may serve notice upon the other setting out brief details of the dispute that has arisen ("Notice of Dispute") and the parties shall use their best endeavours to resolve the dispute by good faith negotiations.

15.2 If the dispute is not resolved within three (3) months from the date of the Notice of Dispute, then the matter shall be referred to arbitration.

15.3 Without prejudice to clause 15.1 above, any dispute arising out of or in connection with this Agreement which cannot be resolved three months from the date of the Notice of Dispute, shall be finally resolved by arbitration in accordance with the provisions of the Arbitration Act 1996 and conducted pursuant to the rules of the Chartered Institute of Arbitrators at present in force and subject to English law.

15.4 The parties acknowledge and agree that:

15.4.1 the tribunal shall consist of a single arbitrator;

15.4.2 the arbitrator shall be appointed by the parties jointly or (failing agreement within five (5) further Working Days) to be selected and appointed by the President for the time being of the Chartered Institute of Arbitrators;

15.4.3 any right of application or appeal to court concerning any question of law arising in the course of the arbitration shall be excluded insofar as the law allows; and

15.4.4 the place of the arbitration shall be London and all submissions and awards shall be made in English.

16. **DOCUMENTS AND OTHER WORK**

All documents and other work (including all letters, reports, memoranda, notes of meetings and working papers but excluding SHEFFIELD's internal working papers and memoranda) prepared by the Employee(s) while providing the Services to COMPANY will be COMPANY's property and on request and in any event on termination of this Agreement SHEFFIELD shall procure and deliver up to COMPANY all such documents and work.
17. CONFIDENTIALITY

17.1 In this clause 17, "Confidential Information" means all confidential information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a party ("Disclosing Party") to another party ("Receiving Party") whether before or after the date of this Agreement including, but not limited to reports and financial statements, information relating to the Disclosing Party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs.

17.2 During the term of this Agreement and after termination or expiry of this Agreement for any reason the Receiving Party:

   17.2.1 shall not use Confidential Information for a purpose other than the performance of its obligations under this Agreement;

   17.2.2 shall not disclose Confidential Information to any person except with the prior written consent of each party other than the Receiving Party or in accordance with clauses 17.3 and 17.4;

   17.2.3 shall make every effort to prevent the use or disclosure of Confidential Information.

17.3 During the term of this Agreement the Receiving Party may disclose Confidential Information to any of its directors, other officers and employees ("Recipient") to the extent that disclosure is reasonably necessary for the purposes of this Agreement.

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

17.5 Clauses 17.2 to 17.4 do not apply to Confidential Information which:

   17.5.1 is at the Commencement Date or becomes at any time after that date publicly known other than by the Receiving Party's or Recipient's breach of this Agreement;
17.5.2 can be shown by the Receiving Party to the Disclosing Party's reasonable satisfaction to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party;

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

17.5.4 is required to be disclosed by law.

18. FREEDOM OF INFORMATION

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

19. BRIBERY

COMPANY shall comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and shall not give, provide or offer to SHEFFIELD any loan, fee, reward, gift (except items of negligible or intrinsic value), or any emolument or advantage whatsoever to the other Party. Non-compliance or suspected non-compliance shall constitute a material breach of this Agreement and this Agreement may be terminated by SHEFFIELD with immediate effect without prejudice to any other rights SHEFFIELD may possess.

20. FORCE MAJEURE

20.1 Upon the happening of a Force Majeure Event:

20.1.1 neither party shall be liable to the other party for any delay in performance or failure to perform the Services in accordance with this Agreement; and

20.1.2 if the Force Majeure Event continues for more than three (3) months the party not subject to the Force Majeure Event may terminate this Agreement with immediate effect by notice in writing to the other party.

20.2 For the avoidance of doubt, nothing shall excuse COMPANY from any payment obligations under this Agreement.
21. ASSIGNMENT AND SUB-CONTRACTING

Neither party may sub-contract the performance of any of its obligations or assign or deal in any way with all or any part of the benefit of, or its rights or obligations under, this Agreement without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed). The sub-contracting party shall be responsible for all acts and omissions of its sub-COMPANYs as if they were its own.

22. NOTICES

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

For SHEFFIELD:
Director of Research & Innovation Services
The University of Sheffield
New Spring House
231 Glossop Road
Sheffield
S10 2GW

For COMPANY:

23. SEVERANCE

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

24. THIRD PARTIES

A person who is not party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause 24 does not
affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

25. RELATIONSHIP OF PARTIES

Nothing in this Agreement is intended to create a partnership or joint venture or legal relationship of any kind that would impose liability upon one party for the act or failure to act of any other party between the parties or any of them, or to authorise any party to act as agent for the other. Save where expressly stated in this Agreement, no party shall have authority to make representations, act in the name or on behalf of or otherwise to bind any other.

26. WAIVER

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

27. VARIATION

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

28. ENTIRE AGREEMENT

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

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

28.3 Nothing in this clause 28 shall operate to exclude and liability for fraud.

28.4 The provisions of this Agreement shall take precedence over any conflicting terms in any subsequent purchase order terms and conditions.
29. **GOVERNING LAW AND JURISDICTION**

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

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

30. **GENERAL**

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

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

Signed by ◆
for and on behalf of **THE UNIVERSITY OF SHEFFIELD**

Name: 
Title: 
Date: 

Signed by ◆
for and on behalf of **[COMPANY]**

Name: 
Title: 
Date: 

<REF> 121218</REF>
SCHEDULE 1

Principal Terms

Employee(s)

<table>
<thead>
<tr>
<th>Name</th>
<th>Job Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Insert details of employees to be seconded]</td>
<td></td>
</tr>
</tbody>
</table>

Secondment Period

[Insert details of the period of the secondment and the % fte]
SCHEDULE 2

Services

[Insert details of the Services to be performed by the seconded Employee(s)]
SCHEDULE 3

Fee

◆ per cent of the Total Employment Costs incurred by SHEFFIELD of employing the relevant employee during the Secondment Period. All Fees are exclusive of VAT.

Periods for which Fee invoices will be submitted: [Details, e.g. monthly, quarterly; from the date of the agreement or from the date of commencement of the secondment]

Maximum Expenses: [Details of any maximum amount which an Employee may claim in any three-month period, inclusive of VAT]

Date of invoices/Payment Schedule