THIS AGREEMENT is made the ____ day of ______________ 2007 BETWEEN:

THE UNIVERSITY OF MANCHESTER acting through MANCHESTER COMPUTER SCIENCE whose administrative office is at Oxford Road, Manchester, M13 9PL; and

THE UNIVERSITY OF SOUTHAMPTON acting through the SCHOOL OF ELECTRONICS AND COMPUTER SCIENCE whose principal place of business is Highfield Campus, University of Southampton, SO17 1BJ; and

Hereinafter referred to individually as a “Party”, collectively or in groups as “the Parties”.

INTRODUCTION:

A. As part of the Joint Information Systems Committee (JISC) Capital Programme (04/06) VRE-2 Virtual Research Environments Programme Phase 2, the Parties to this Agreement are undertaking a project entitled “myExperiment”. The Parties are hereinafter collectively referred to as the Consortium.

B. The Consortium intends to carry out a programme of work further detailed in Annex 1 (hereinafter referred to as the Project).

C. The 24 month Project will involve the development of the VRE model, its deployment in life sciences and chemistry and then extension to new user communities all as further detailed in Annex 1 (hereinafter referred to as “Deliverables”). It is envisaged that the Deliverables may be further developed after the end of the Project and that such further development may lead to the production of additional materials (hereinafter referred to as “Products”).

D. This Agreement sets out the details of the relationship between the Parties and ensures that both Parties adhere to the JISC Terms and Conditions, available electronically at http://www.jisc.ac.uk/fundingopportunities/proj_manguide.aspx.

IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions

1.1 “Intellectual Property” means any patent, registered design, copyright (including moral rights), database right, design right, topography right, trade mark, service mark, application to register any of the aforementioned rights, trade secret, right in unpatented know-how, right of confidence and any other intellectual property right of any nature whatsoever in any part of the world.

1.2 “Material” means all tangible and intangible items, including texts, data or any other information disclosed or stored in physical or electronic form, which are developed in the course of the Project.

1.3 “Project Manager” means a person to be nominated by the Management Steering Committee.

1.4 “Management Steering Committee” means the group set up by the Consortium to manage the Project consisting of the nominated individuals set out in Annex 3.
1.5 In this Agreement, unless the context otherwise requires:

a) References to a "clause" or "schedule" are to a clause of or a schedule to this Agreement, and;

b) Words in the singular include the plural and vice versa and words of any gender include every other gender and references to legal persons shall include natural persons and vice versa, and;

c) The headings are inserted for convenience only and shall be ignored in the interpretation of this Agreement, and;

d) A reference to any statute, statutory provision or subordinate legislation shall be construed as including a reference to that enactment as re-enacted, replaced or modified from time to time, whether before, on or after the date of this Agreement.

2. Purpose of the Consortium

2.1 The purpose of the Consortium is to carry out the Project and to produce the Deliverables as described.

3. Commencement and Duration

3.1 The Consortium was formed and the Project commenced with an effective date of 1 March 2007 and the Project has a duration of 24 months, unless otherwise agreed in writing by the Parties.

4. Project Resources

4.1 The total grant funding requested for the Project is as follows:

Financial Year 2006/07 – £22,714

Financial Year 2007/08 - £259,446

Financial Year 2008/09 - £132,306

4.2 Payments shall be made from JISC to the University of Southampton. Each Party shall be entitled to receive the funding allocated to them as detailed in Annex II of this Agreement and payments to other Parties from the University of Southampton will be made within 30 days of receipt of quarterly invoices in arrears (in April, July, October and January). Invoices must be itemised against budget headings used in the original proposal.

4.3 Where equipment items are purchased or other claimable expenses are incurred, claims should be passed to the Project Manager as soon as they have been paid, with copies of the original invoices attached; or claimed from the relevant Party and invoiced as detailed in clause 4.2.
4.4 Good procurement practice should be used by all parties when purchasing goods and services for or on behalf of the Consortium: parties making claims directly from the University of Southampton must obtain one quotation for all goods/services between £500 and £1000 and a minimum of three quotations for all goods and/or services over £1000 (all prices include VAT).

5. **Project Management**

5.1 The Parties agree that the Project lead site is the University of Southampton. The Parties agree that the Project will be managed by the Project Manager. The Project Manager will report to the Management Steering Committee.

5.2 The Project Manager will have responsibility for the day-to-day management of the Project, with the Management Steering Committee being concerned with overall policy and direction. The Parties agree that the Project Manager will have the responsibilities detailed below.

5.3 The Management Steering Committee will determine the overall nature of the Deliverables and will retain responsibility for determining the technical standards to be adopted by the Project. The academic, scientific and technical content of the Deliverables will be determined by the Management Steering Committee.

5.4 The Management Steering Committee shall be made up of the members as listed in Annex 3 to this Agreement.

5.5 The Management Steering Committee will meet at least four times throughout the Project. Additional meetings may be called by either Party or on the advice of the Project Manager. The Management Steering Committee may choose to take advice from third parties as is required.

5.6 Meetings will operate under the following rules:

- The Project Manager will notify Management Steering Committee members of the dates of meetings and outline agenda with at least 7 days notice.

- All decisions shall be reached by consensus wherever possible. Where this is not possible, each member on the Management Steering Committee will have one vote, except the Chair who shall be Professor David De Roure who has a casting vote.

- Decisions decided by voting shall be taken on a simple majority basis with the Chair having a casting vote.

- Management Steering Committee members may nominate a representative to attend meetings and vote on their behalf.

- The minimum number of voting members required for meetings is four, two from each Party.
5.7 Decisions may be made by the Management Steering Committee outside of Management Steering Committee meetings by e-mail or other means.

5.8 There will be monthly Project Meetings between members of the project team, to include the Project Manager (or delegate) and team workers. The purpose of these meetings is to discuss progress and any other issues relating to the production of Deliverables.

5.9 Each Party undertakes to use all reasonable endeavours to:

- Perform on time the tasks and work packages assigned to it under the schedules shown in Annex 4
- Participate actively with other Parties where necessary
- Notify promptly the Project Manager of any delay in performance
- Ensure that at least one representative attends each Project Meeting
- Prepare and present reports on progress for each Project Meeting and as required.

5.10 Additional institutions may be invited to join the Consortium only by the unanimous decision of the Management Steering Committee and on the condition that the new institution becomes a Party to this Agreement with such other terms and conditions as the Management Steering Committee considers reasonable.

5.11 A Party may withdraw from the Consortium only in the event of irremediable breach of this Agreement by the other Party or breach of the conditions laid down by JISC and with the unanimous agreement of the remaining Parties. The withdrawal arrangements will be subject to such conditions as the Management Steering Committee considers reasonable.

5.12 A Party may be expelled from the Consortium only if they are in breach of the conditions laid down by JISC and/or in breach of the terms of this Consortium Agreement. This is to be determined by the unanimous agreement of the other Parties.

5.13 In the event of the withdrawal or expulsion of a Party, the Consortium will only be liable to meet the cost of any work undertaken up to the point at which such Party ceases to be a member of the Consortium. The balance of any over-payments made to the Party will be returned to the University of Southampton within 30 days of withdrawal or expulsion. In all cases, the Consortium reserves the right to co-opt work produced as a result of the Project (software, documentation, etc.) and either transfer tasks to another Party or amend the Project Plan, as appropriate.

6. Resource Management

6.1 In the course of the Project, each Party is involved in the creation of resources in the form of software, reports, presentations, etc. These resources are to be stored
in an archive accessible to all members of the Consortium known as “the Project Archive”).

6.2 The University of Southampton hereby undertakes to ensure that the Project Archive remains accessible for the duration of the Project and for a period of at least one year after the end of the Project. This period is subject to extension if the Management Steering Committee so decides.

6.3 Each Party hereby undertakes to the other Parties that it shall ensure that its employees, agents and students shall:

- Keep confidential all information of a confidential nature (whether written or oral) concerning this Agreement and the business affairs of any other Party that it shall have obtained or received as a result of the discussions leading up to or entering into performance of this agreement, including all information, texts or data transferred between the Parties that is marked as confidential, or which, by its nature, should be reasonably construed as being of a confidential nature (the “Information”)

- Not without the prior written consent of the relevant other Party disclose the Information either in whole or in part to any other person save those of its employees, agents and students involved in the implementation or evaluation of the research who have a need to know the same for the performance of their duties

- Use the Information solely in connection with the implementation of the Project and not otherwise for its own benefit or the benefit of any third party

6.4 The provisions contained in Clause 6.3 above shall not apply to the whole or any part of the Information to the extent that it can be shown by the receiving Party to be:

- Known to the receiving Party prior to the date of this Agreement and not obtained directly or indirectly from any other Party; or

- Obtained from a third party who lawfully possesses such Information that has not been obtained in breach of a duty of confidence owed to any Party by any person; or

- In the public domain in the form in which it is possessed by any other Party other than as a result of a breach of a duty of confidence owed to such other Party by any person; or

- Required to be disclosed by legal process, law or regulatory authority.

6.5 Each Party hereby undertakes to the other Party to make all relevant employees, agents and students aware of the confidentiality of the Information and provisions of these Clauses 6.3 & 6.4 and without prejudice to the generality of the foregoing to ensure compliance by such employees, agents and students with the provisions of these Clauses 6.3 & 6.4.
7. **Intellectual Property**

7.1 With regard to the ownership of Intellectual Property, subject to Clause 7.5 below, the Parties agree as follows:

- All Materials (and the Intellectual Property therein) not incorporated into a Deliverable shall be owned by the Party generating the Material

- All Deliverables, and the Materials contained therein, along with all Intellectual Property therein, not incorporated into a Product, shall be owned by the Party or Parties generating the Deliverable. Where this is jointly owned, the share should be in accordance with inventive input, with the Management Steering Committee arbitrating should there be a dispute on this issue

- All Products shall be owned by the Party or Parties generating the Product. Where this is jointly owned, the share should be in accordance with inventive input, with the Management Steering Committee arbitrating should there be a dispute on this issue.

7.2 The Parties agree that all Deliverables and Products shall be clearly marked identifying by whom the copyright is owned. The Parties agree that the Management Steering Committee will produce a suitable form of words acknowledging the involvement of the Parties and the ownership of the copyright which shall appear on all copies of the Deliverables and Products.

7.3 Each Party hereby grants to the other Parties a non-exclusive royalty free licence to use the Deliverables and Products for the purposes of carrying out the Project and for teaching and research purposes during the Project and after the end of the Project.

7.4 To the extent that the Parties are free to do so, the Parties hereby agree to grant to each other and to third parties such non-exclusive licences to the Intellectual Property as are necessary to enable the exploitation of the Deliverables and the development and creation of Products in accordance with the provisions of clause 8.1.

7.5 Nothing in this Agreement shall be deemed to transfer ownership of any Background IP (being any Intellectual Property owned or controlled by any Party, which that Party is free and reasonably able to bring to, and which are used in the course of, the Project, other than the Deliverables, the Materials or the Products).

8. **Commercial Exploitation**

8.1 The parties agree that the Management Steering Committee will discuss before the end of the Project the potential for the commercial exploitation of the Deliverables and Products. The Management Steering Committee shall review the Deliverables and shall discuss the potential for exploitation and the potential for development of Products from the Deliverables. The Management Steering Committee will agree upon a strategy for exploitation.
8.2 Income derived from exploitation of Deliverables and Products shall be received by and allocated to an account within the finance office of the Party responsible for the generation of the income. Where more than one Party is involved, the Parties shall agree amongst themselves on procedures for receipt of income.

8.3 After the deduction of all relevant expenditure and costs associated with exploitation, the remaining income derived from commercial exploitation shall be divided between the Parties in proportions relative to inventive input and finally determined by the Management Steering Committee on a case by case basis.

8.4 The Parties agree that the sharing of revenue applies to those Parties remaining at the end of the Project. If a Party withdraws or is expelled prior to the completion of the Project their entitlement to a share in the income derived from commercial exploitation will be determined by the Management Steering Committee and will take account of the proportion of the total Project undertaken by that Party.

9. **Publication and Press Releases**

9.1 All publications concerning the Project will have authorship that comprises at least each of the members of the Management Steering Committee, as well as other authors where appropriate, unless otherwise agreed by the Management Steering Committee. All Parties will make best endeavours to secure approval from all other Parties for research reports prior to submission for publication.

10. **Liability**

10.1 The work associated with the Project will be carried out by each Party in accordance with the highest academic standards and reasonable endeavours will be made to achieve the degree of reliability and accuracy appropriate to work of this kind.

10.2 No Party has control over the use to which the results of the work may be put by other Parties and each Party will therefore be deemed to have satisfied itself in every respect as to the suitability and fitness of the work for any particular purpose or application.

10.3 In no circumstances will a Party, its servants or agents, accept any liability howsoever caused arising from any error or inaccuracy in any opinion, advice, report or deliverable arising from this work nor for any resulting damage, loss expenses or claim, except to the extent that such can be shown to be caused by the wilful negligence of the Party.

10.4 The Parties’ liability arising as a direct result from contract or tort shall be limited to £1,000,000 in the aggregate for each party. To the extent permitted by law, the Parties exclude all other liability howsoever arising as a result of this agreement including but not limited to exclusion of consequential or indirect loss or damage. This limitation of liability shall not apply in respect of any Party’s liability for death and/or personal injury caused its negligence or for fraudulent misrepresentation.

10.5 Where the parties either individually or as a group exploit the Deliverables and/or the Products or pass the Deliverables and/or the Products to third parties either at
a cost or free of charge the Parties undertake to each to enter into a written contract with such third parties either individually or as a group dependant upon how the Deliverables and/or the Products are to be supplied and to include in that contract a full replication of Clause 10.4.

11. General

11.1 No Party will be entitled to assign this Agreement nor all or any of their rights and obligations hereunder without the prior written consent of the others.

11.2 All disputes or differences which will at any time hereafter arise between the Parties in respect of the construction or effect of this Agreement or the rights, duties and liabilities of the parties hereunder or any matter or event connected with or arising out of the Project will be referred in the first instance to the Management Steering Committee. If the Management Steering Committee is unable to resolve the dispute the Chair shall select an independent third party to act as arbitrator.

11.3 Nothing in this Agreement will create or be deemed to create a partnership or relationship of employer and employee between the Parties.

11.4 No person who is not a party to this Agreement is entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

11.5 The parties intend each provision of this Agreement to be severable and distinct from the others. If a provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, the parties intend that the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

11.6 This Agreement sets out the entire agreement between the parties relating to its subject matter and overrides any prior correspondence or representations and any previous agreements (if any) between the Parties.

11.7 This Agreement will be governed by the laws of England. This Agreement is subject to the exclusive jurisdiction of the English courts to which the parties hereto submit. This clause does not prevent a party from seeking interim relief in any court of competent jurisdiction.

AGREED BY THE PARTIES THROUGH THEIR AUTHORISED SIGNATORIES

For and on behalf of the University of Manchester:

Signed................................

Name: ................................

For and on behalf of the University of Southampton:
Signed..............................

Name: .............................