

DATED 2019

**Award for Translational
Research**

BETWEEN

(1) BRITISH HEART FOUNDATION

and

(2) [NAME OF ORGANISATION]

THIS AGREEMENT is made the day of 2018

BETWEEN:

1. **BRITISH HEART FOUNDATION**, registered as a company in England and Wales (registered no. 699547) and as a charity in England & Wales (registered no. 225971) and Scotland (registered no. SC039426) and whose registered office is at Greater London House, 180 Hampstead Road, London, NW1 7AW ("BHF"); and
2. **[NAME OF ORGANISATION]**, [a company registered in England & Wales (registered no. [NUMBER] with registered address at [ADDRESS]] (the "Organisation").

WHEREAS:

- A. An application has been made by the Organisation for an Award from BHF. In order to further its charitable objects, BHF has decided to approve an Award to fund a study by [name of principal investigator] entitled [title of award].
- B. To facilitate the management and commercialisation of the technology arising under the agreed Award, the Parties have agreed that the intellectual property arising as a result of the research to be undertaken shall be protected, managed and exploited in accordance with the provisions of this Agreement.

IT IS AGREED as follows:

DEFINITIONS AND INTERPRETATION

In this Agreement:

- 1.1 "Acceptance Letter" means the letter confirming the acceptance of the Award as granted by BHF and signed by Organisation and BHF, subject to the settlement and execution of this Agreement;
- 1.2 "Affiliate" means, with respect to a given entity, any person, corporation, partnership or other entity, that Controls, is Controlled by, or is under common Control with such entity;
- 1.3 "Agreement" means this agreement;
- 1.4 "Application" means the full application for an Award, made by the Organisation as amended by the Acceptance Letter, if applicable;
- 1.5 "Award" means the grant made by BHF to third party to carry out translational research and where the context so requires, the Award made to the Organisation pursuant to this Agreement;
- 1.6 "Award Amount" means the amount of money comprising the Award granted to Organisation pursuant to the Application and set out in the Award Letter, which sum may differ from the Award Amount Requested;
- 1.7 "Award Amount Requested" means the amount of money requested as an Award by Organisation as set out in the Application;
- 1.8 "Award Letter" means the letter or email from BHF to the Principal Investigator confirming BHF's intention to grant an Award, subject to the settlement and

execution of this Agreement, and setting out the proposed project Milestones, plan and costs schedule;

1.9 **“Background Intellectual Property”** means:

- (a) any Intellectual Property created, devised or generated by the Organisation’s staff (including visiting researchers) working in the laboratory of the Principal Investigator or collaborating with the Principal Investigator prior to the commencement of, or during the term of, the Project (other than the Project Intellectual Property), which is necessary or useful for undertaking the Project or the protection or exploitation of the Project Intellectual Property including without limitation [list any specific patents from the Application], and
- (b) any other Intellectual Property owned by the Organisation or which the Organisation has rights to (other than the Project Intellectual Property) which is actually used in the performance of the Project;

1.10 **“Business Day”** means a day on which banks are normally open for business and which is not a Saturday or Sunday or a bank or public holiday in England and Wales;

1.11 **“Confidential Information”** means any and all data, results, Know-how, show-how, software, plans, details of research work, discoveries, inventions, intended publications, intended or pending patent applications, designs, technical information, business plans, budgets and strategies, business or financial information or other information in any medium and in any form, and any physical items, prototypes, compounds, samples, components or other articles or Materials disclosed on or after the Effective Date by one Party to another Party whether orally or in writing or in any other form and identified as confidential at the time of disclosure;

1.12 **“Documents”** means reports, research notes, charts, graphs, comments, computations, analyses, recordings, photographs, paper, notebooks, books, files, ledgers, records, tapes, discs, diskettes, CD-ROMs, computer programs and documents thereof, computer information storage means, samples of material, other graphic or written data and any other media on which Know-How can be permanently stored;

1.13 **“End of Award Report”** means a report by the Organisation in the prescribed form on the activities funded by the Award following the completion of the Project;

1.14 **“Effective Date”** means the date of the last signature of this Agreement;

1.15 **“Equity Holdings”** means any equity or any other interest (whether by way of debenture, warrant, security or otherwise) in any company transferred or issued in consideration of the assignment or grant of a licence or an option thereto to such company in respect of any Project Intellectual Property;

1.16 **“Exploiting Party”** means the Party responsible for commercialising and exploiting the Project Intellectual Property with or without the Background Intellectual Property in accordance with Clause 7 ;

1.17 **“Intellectual Property”** (or “IP”) means:

- (a) patents, designs, trade marks and trade names (whether registered or unregistered), copyright and related rights, database rights, and rights to use, and protect the confidentiality of, Know-How and Confidential Information;

- (b) all other intellectual property rights and similar or equivalent rights anywhere in the world which currently exist or are recognised in the future; and
 - (c) applications, extensions and renewals in relation to any such rights;
- 1.18 **“Know-How”** means any technical and other information which is not in the public domain, including information comprising or relating to concepts, discoveries, data, designs, formulae, ideas, inventions, methods, models, assays, research plans, procedures, designs for experiments and tests and results of experimentation and testing (including results of research or development), processes (including manufacturing processes, specifications and techniques), laboratory records, chemical, pharmacological, toxicological, clinical, analytical and quality control data, trial data, case report forms, data analyses, reports, manufacturing data or summaries and information contained in submissions to and information from ethical committees and regulatory authorities and computer programs or algorithms. Know-How includes any rights including trade secrets, copyright, database or design rights protecting such Know-How. The fact that an item is known to the public shall not be taken to preclude the possibility that a compilation including the item, and/or a development relating to the item, is not known to the public;
- 1.19 **“Material”** means any chemical or biological substance including any:
- (a) organic or inorganic element;
 - (b) nucleotide or nucleotide sequence including DNA and RNA sequences;
 - (c) gene;
 - (d) vector or construct including plasmids, phages or viruses;
 - (e) host organism including bacteria, fungi, algae, protozoa and hybridomas;
 - (f) eukaryotic or prokaryotic cell line or expression system or any development strain or product of that cell line or expression system;
 - (g) protein including any peptide or amino acid sequence, enzyme, antibody or protein conferring targeting properties and any fragment of a protein or a peptide enzyme or antibody;
 - (h) drug or pro-drug;
 - (i) assay or reagent;
 - (j) any other genetic or biological material or micro-organism;
 - (k) data for the derivation of molecular structures including NMR spectra, X Ray diffraction patterns and other primary experimental information, assignments and other calculations required for determination of the structure, and co-ordinates of the derived molecular structure; and
 - (l) transgenic animals;
- 1.20 **“Milestone”** means the Milestones and each of them which must be achieved to the reasonable satisfaction of BHF in order for further Milestone payments to be approved, as described in the Award Letter;

- 1.21 **“Milestone Date”** means a date agreed in writing between the Parties for the achievement of a Milestone;
- 1.22 **“Milestone Period”** means the period of time during which the work and activities to achieve a Milestone are to be undertaken by Organisation;
- 1.23 **“Non-Exploiting Party”** means the Party who is not the Exploiting Party;
- 1.24 **“Parties”** means the parties to this Agreement, or any of them, as the context may require and **“Party”** shall be interpreted accordingly;
- 1.25 **“Plan”** means the plan of research incorporated in the Application attached at Schedule 2 as amended by the Acceptance Letter, if applicable;
- 1.26 **“Policies and Positions”** means the policies and positions of BHF for grants from time to time, that are notified to Organisation;
- 1.27 **“Principal Investigator”** means [name of Principal Investigator] of the Organisation;
- 1.28 **“Project”** means the research to be funded by BHF under the Award Letter and the terms of this Agreement and to be undertaken by the Organisation entitled “[title of award]” (as more particularly detailed in the Application);
- 1.29 **“Project Intellectual Property”** means any Intellectual Property (including the Project Patents) created, devised or arising out of the Organisation’s undertaking and performance of the Project or any part of it;
- 1.30 **“Project Inventions”** means any inventions created, devised or arising out of the Organisation’s undertaking and performance of the Project or any part of it;
- 1.31 **“Project Patents”** means any patent applications that may be made by the Organisation or by BHF on behalf of the Organisation (as appropriate) which claim any Project Inventions or parts thereof, and any patents resulting from any such applications, utility certificates, improvement patents and models and certificates of addition and all foreign counterparts of them in all countries, including any divisional applications and patents, refiling, renewals, continuations, continuations-in-part, patents of addition, extensions (including patent term extensions), reissues, substitutions, confirmations, registrations, re-validations, pipeline and administrative protections and additions, and any equivalents of the foregoing in any and all countries of or to any of them, as well as any supplementary protection certificates and equivalent protection rights in respect of any of them;
- 1.32 **“Project Start Date”** means the date upon which the Organisation commences work on the Project, as set out in the Acceptance Letter;
- 1.33 **“PubMed Central”** means an archive of life science journal literature developed by European Bioinformatics Institute, the University of Manchester (Mimas and the National Centre for Text Mining) and the British Library accessible at <http://www.europepmc.org/>;
- 1.34 **“Researchfish”** means an online survey database developed from Medical Research Council’s (MRC) e-Val to gather information about research outputs and outcomes;
- 1.35 **“Staff”** means all scientific and technical staff, who are employees, students,

officers, contractors, independent consultants or otherwise of the Organisation and who participate in the Project including the Principal Investigator;

- 1.36 References in this Agreement to any statutory provisions shall be construed as references to those provisions as respectively amended consolidated or re-enacted (whether before or after the Effective Date) from time to time and shall include any provisions of which they are consolidations or re-enactments (whether with or without amendment).
- 1.37 Reference to any statute, statutory instrument, regulation, by law or other requirement of English law and to any English legal term for any actions, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or doctrine shall, in respect of any jurisdiction other than England, be deemed to include that which most nearly approximates in that jurisdiction to the relevant English term.
- 1.38 The Schedules and Recitals form part of this Agreement and any reference to this Agreement shall include the Schedules and Recitals.
- 1.39 In this Agreement:
- (a) the masculine gender shall include the feminine and neuter and the singular number shall include the plural and vice versa;
 - (b) references to persons shall include bodies corporate, unincorporated associations, partnerships and individuals;
 - (c) except where the contrary is stated, any reference in this Agreement to a Clause or Schedule is to a Clause of or Schedule to this Agreement, and any reference within a Clause or Schedule to a sub-Clause, paragraph or other sub-division is a reference to such sub-Clause, paragraph or other sub-division so numbered or lettered in that Clause or Schedule.
- 1.40 The headings in this Agreement are inserted for convenience only and shall not affect the construction of the provision to which they relate.
- 1.41 References to the winding-up of a person include the amalgamation, reconstruction, reorganisation, administration, dissolution, liquidation, bankruptcy, merger or consolidation of such person and an equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled or resident or carries on business or has assets.
- 1.42 Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.43 Where reference is made in this Agreement to the prior written consent of BHF being required in respect of any matter, the Organisation shall give not less than twenty (20) Business Days’ notice to BHF of the matter for which such consent is required.

2 PROJECT FUNDING AND OBLIGATIONS

- 2.1 The Parties agree that BHF shall pay the Award Amount to Organisation and Organisation shall carry out the Project, in accordance with the Acceptance Letter and the terms of this Agreement.

Organisation Obligations

- 2.2 Organisation shall ensure that:
- (a) the Award Amount is applied exclusively to the Project in accordance with the terms and conditions of this Agreement and as anticipated in the Acceptance Letter;
 - (b) all applicable laws and regulations, and obligations to third parties relating to the Project or the anticipated activities to be carried out under the Award are observed and met, and that no obligations to third parties conflict with Organisation's obligations as set out in this Agreement;
 - (c) work and activities to be undertaken and carried out as part of the Project shall be adequate and proper, and that all individuals and parties carrying out such work shall be appropriately supervised, trained, equipped and instructed.
- 2.3 Organisation acknowledges and agrees that BHF relies on Organisation to ensure that the work and activities carried out as part of the Project are carried out in accordance with best practice to avoid damage, loss or injury to persons or property. Organisation shall take all reasonable steps and precautions to safeguard the health and safety of those working on the Project and acknowledges and agrees that BHF shall have no liability for any accident, injury or loss sustained by any person as a result of work or activities carried out as part of the Project that are managed or conducted by Organisation. In accepting the Award, Organisation agrees to indemnify BHF against any costs, claims or liabilities (including legal costs) suffered or incurred by BHF as a result of any action, claim or complaint brought against BHF in connection with or arising from any work, activities or other action that is part of the Project and carried out or managed by Organisation, arising from the Project.
- 2.4 Organisation shall and will for the duration of the term of this Agreement maintain in full force and effect public and professional indemnity insurance at a level appropriate to the risks involved in carrying out the Project.
- 2.5 Organisation is responsible for the management and performance of the Project. If at any time during the term of this Agreement Organisation suspects fraud or misconduct in carrying out the Project, it must notify BHF immediately and keep BHF fully informed. BHF shall have the right and power to conduct its own investigation in the event that it reasonably believes any act of fraud or misconduct has taken place in respect of the Project and Organisation shall provide such assistance and co-operation as may reasonably be requested by BHF. For the purposes of clause 14.2 of this Agreement, notice of its suspicion or belief that fraud or misconduct has taken place, shall be a breach of Organisation's material obligation to properly supervise and carry out the Project, entitling BHF to terminate this Agreement.
- 2.6 The Organisation undertakes to use all funding received from BHF pursuant to this Agreement solely for the purposes of the Project as described in the Plan. The Organisation shall obtain BHF's prior written consent to any other use of any funding received from BHF pursuant to this Agreement or any amendment to the Plan.
- 2.7 The Organisation undertakes not to seek, apply for or accept without BHF's prior written consent (such consent not to be unreasonably withheld) any other funding or support (whether in kind or otherwise) for the programme of research agreed for

the Project, whether commercial or non-commercial, during the period of the Project.

- 2.8 Organisation agrees that it shall comply with all and any reasonable requests from BHF in respect of the performance of or reporting on the Project.
- 2.9 By approving a grant application for submission, all signatories confirm to the best of their knowledge that there are no outstanding sanctions in place relating to bullying, harassment, research misconduct or scientific fraud against the principal investigator or supervisor(s), co-investigator(s), or any named research staff employed by the Organisation. In accepting a grant, the Organisation agrees to comply with our Policy on Bullying and Harassment set out in Schedule 2 and our Policy on Research Misconduct set out in Schedule 3.

No BHF Liability

- 2.10 BHF shall not be liable to the Organisation for any sums in excess of the Award Amount and shall not be liable for or indemnify the Organisation in respect of any claims for compensation or any other claims for which the Organisation may be liable as an employer.
- 2.11 BHF does not act as an employer in respect of the grant of the Award. Organisation shall be responsible and liable for the issue of contracts and compliance with all relevant laws and regulations including, without limitation, the paying of national insurance contributions or superannuation. Organisation acknowledges and agrees that the Award is intended to provide funding to carry out the Project and all liability in respect of the execution of the Project by the Organisation shall remain at all times with the Organisation.
- 2.12 BHF shall not be liable for Staff salaries for any period after the end of an Award period and prior to that Award's renewal or a new grant award commencing or as a consequence of the application process.

Ownership of Equipment and Organisation Obligations

- 2.13 Where any equipment is purchased using the Award Amount for use in the Project ("Equipment"), that Equipment shall be deemed to be donated to Organisation by BHF subject to the condition that the equipment shall be used exclusively for the performance of the Project primarily and secondarily research into cardiovascular science unless agreed in writing otherwise by BHF.
- 2.14 Organisation shall be responsible for:
 - (a) the installation, maintenance, repair and insurance of any Equipment at Organisation's expense; and
 - (b) ensuring the lowest possible price is paid for any Equipment.
- 2.15 Reimbursement of the Equipment purchase will be subject to receipt for a valid claim from the Organisation's finance office for the item(s) awarded under the Award to which a copy of the relevant supplier's invoice(s) must be attached. The supplier's invoice(s) should be countersigned by the Principal Investigator and bear the item number to which it relates. Equipment for medical research is normally exempt from VAT. BHF will only reimburse VAT on non-exempt items and only if provision has been made for this in the Award.

- 2.16 Subject to clause 2.17 below, Equipment purchased under the Award is deemed donated to the department in which the Principal Investigator works specifically for the research as specified in the Award Letter. BHF's prior written approval must be obtained to use the Equipment for any other purpose and such approval may be conditional on BHF receiving financial compensation for such use.
- 2.17 If BHF approves the transfer of the Award to another Institution, Equipment which was purchased under the Award may also be transferred provided this is at no cost to BHF and subject to the Organisation's consent.

Performance of the Project and Intellectual Property Ownership

- 2.18 BHF and the Organisation agree that the performance of the Project, ownership of the Project Intellectual Property and Background Intellectual Property, and any associated matters shall be governed in accordance with this Agreement, the Acceptance Letter, and the Policies and Positions. If there is any conflict between the provisions of the main body of this Agreement, the Acceptance Letter, or the Policies and Positions, then the provisions of this Agreement shall prevail. This Agreement shall not come into force unless and until it is signed by both parties, an Award Letter has been issued by BHF and an Acceptance Letter has been signed by Organisation and BHF.

Payment of the Award Amount

- 2.19 As at the Effective Date, the costs schedule in the Award Letter shall set out the way in which it is envisaged by the Parties that the Award Amount will be applied for the purposes of the Project.
- 2.20 The Award Amount will not be increased. Monies may not be varied between budget headings. The control of expenditure to be funded under the Award must be governed by the normal standards and procedures of the Organisation and must be covered by the formal audit arrangements that exist in the Organisation. The Award is for a fixed period and any surplus funds will remain with BHF.
- 2.21 Claims will be reimbursed quarterly in arrears against details itemising expenditure from the Organisation's finance office in the format specified by BHF from time to time. Essential details required include the Grant number, Milestone number, period of the claim, names of approved staff, their basic salary and start date. Equipment and research consumables should be shown separately. Any queries raised by BHF must be responded to within two weeks to avoid non-payment. A final claim must be submitted within six months of the end of the Award period and all outstanding matters must be resolved within a further three months. No reimbursement will be made against delayed claims. Unspent funds will be reallocated through BHF's research committees to new grants following peer review.
- 2.22 The Parties agree and acknowledge that due to the nature of the research to be carried out some costs may vary from the sums originally agreed in the Award Letter. Organisation shall use its best endeavours to ensure that the Project costs are managed in accordance with the Parties expectations. Where this is not possible, Organisation shall notify BHF as soon as it reasonably believes the costs for the Project are likely to vary. The Parties shall then discuss in good faith any variations to the Award Amount that are reasonably necessary to ensure the successful completion of the Project.
- 2.23 BHF will not be obliged to pay the Award Amount or any part thereof if, at the time

of request by the Organisation, any of the events described in Clause 14.2 have occurred or the Organisation is in material breach of any term or condition of this Agreement.

- 2.24 Salaries will be reimbursed at a level no higher than the grade and level awarded and will include nationally agreed pay awards providing the project commences within 6 months of the Effective Date. Any inflationary amounts used when costing the application will remain with BHF as surplus funds. Increases in salaries other than annual increments and nationally agreed pay awards will not be met by BHF. BHF reimburses salaries aligned to the national pay scales or recognised local pay models. BHF will not object to Organisations paying higher salaries at their own cost.
- 2.25 The Award is granted on condition that any VAT payable infrastructure and overhead costs are met by the Organisation (including but not limited to lighting, heating, support staff salaries, insurance, maintenance, publication charges, administrative costs, library facilities).

Reporting

- 2.26 When the Organisation considers that any of the Milestones have been achieved by the relevant Milestone Date:
- (a) The Organisation shall as soon as reasonably practicable send a detailed report in a form and manner proscribed by BHF (the “**Milestone Report**”) to BHF evidencing how the relevant Milestone has been achieved; and
 - (b) BHF shall either:
 - i. confirm to the Organisation in writing, within thirty (30) Business Days of receipt by BHF of the Milestone Report that the Milestone has been achieved by the Milestone Date to BHF’s reasonable satisfaction, in which case, subject to the satisfaction of the terms of this Agreement, BHF shall approve the progression of the Project to the next Milestone and agree to the payment for the next Milestone, in accordance with the terms of this Agreement; or
 - ii. advise Organisation that the Milestone has not been achieved to BHF’s reasonable satisfaction by the relevant Milestone Date and that it shall not continue to fund the Project and shall not make payments for Milestone yet to be performed, in which case BHF shall provide Organisation with reasonable details of the grounds on which it has reached this decision.
- 2.27 BHF may, at its sole discretion, grant the Organisation a reasonable period of time (“**Milestone Extension**”), in order to address the reasons why BHF has judged that a particular Milestone has not been met. Upon the expiry of a Milestone Extension, BHF shall, at its sole discretion, decide whether or not to continue to fund the Project, but BHF shall not be obliged to do so.
- 2.28 The final Milestone Report in the prescribed format must be submitted within three months of the end of the Project. The final claim for reimbursement will be withheld until receipt of the final report, and the Award closed six months after the end date, with outstanding invoices unpaid in its absence. Failure to submit a report may cause BHF to terminate an existing Award and refuse to consider further applications from the Principal Investigator.

3 PROJECT STAFF AND CONDUCT

- 3.1 The Organisation warrants that it has or that it shall have in place contracts with its Staff such that any Project Intellectual Property shall vest in the Organisation. BHF may upon reasonable notice require the Organisation to produce all and any Staff contracts for inspection by BHF.
- 3.2 The Organisation shall keep full, detailed and accurate records of all of its activities and results obtained in connection with the Project. In this respect, the Organisation shall procure that the Staff shall at all times:
 - (a) observe professional standards; and
 - (b) keep scientific notebooks recording all research, development and other work carried out in respect of the Project and the results of such research, development and other work, including keeping bound note books with page numbering recording all results and observations signed by the persons obtaining such results or making such observations, and witnessed by an employee of the Organisation who is not a member of the Staff but who understands the work and certifies their signature accordingly.
- 3.3 The Organisation shall be responsible for the management, monitoring and control of all research work undertaken by it. This shall include, as appropriate, the requirements of all applicable laws and regulatory authorities, including those governing the use of radioactive isotopes, diagnostic tools, animals, pathogenic organisms, genetically modified organisms, toxic and hazardous substances, research on human subjects and human embryos, and shall also include appropriate ethical approvals and consents, including such approvals and consents for obtaining human tissues and other relevant human samples.
- 3.4 Any research under the Project that involves animals that is undertaken by the Organisation, its collaborators or service providers (whether in the UK or internationally) shall comply with both any BHF policy on the use of animals in research that BHF may issue during the term of the Agreement and any prevailing legislation or regulations, including, without limitation, the obtaining of a Home Office licence, where necessary. If procedures regulated under UK legislation, including without limitation the Animals (Scientific Procedures) Act 1986, are to be used, the research must comply with such legislation, be approved by the local ethical review process and be conducted with due consideration for the 3Rs (replacement, reduction and refinement of the use of animals in research).
- 3.5 Prior to the Project Start Date, Organisation shall obtain all necessary approvals from its ethics committee.
- 3.6 The Organisation must obtain BHF's written approval before appointing and replacing staff funded by the Award. The Organisation should submit the candidate's CV, unless included in the application, to BHF with the proposed basic starting salary and start date for prior written approval. Starting salaries for replacement staff will normally revert to the levels awarded for the first year of the Award.
- 3.7 The Organisation must notify BHF of any delays relating to the appointment of staff. BHF will not be held responsible for any costs incurred in the event of such delays and reserves the right to review the Award and make any changes it deems appropriate, including terminating the Award.

- 3.8 Staff whose salaries are funded by BHF, are expected to devote substantially the whole of that salaried time to the funded activity.

4 PROJECT MANAGEMENT AND REPORTING

- 4.1 Progress against Milestones, if applicable, shall be reviewed and determined in the following manner:

(a) BHF shall:

- (i) monitor the performance and technical content of the Project against the Plan throughout each Milestone Period and the term of this Agreement;
- (ii) critically assess the results of the Project;
- (iii) authorise modifications to the implementation of the Project (including the implementation of the Project objectives) as necessary from time to time; and
- (iv) advise the Organisation when and whether each of the research phases, Milestones or targets of the Project have been achieved.

(b) Organisation shall:

- (i) assess the ongoing results of the Project and what has been learnt and agree future research;
- (ii) identify and address any weaknesses or delays in the Project; and
- (iii) co-ordinate and manage internal and outsourced components of the Project, including agreeing any collaborations or sub-contracts identified in the Plan or otherwise.

- 4.2 The Organisation shall upon request make available to BHF copies of all records generated in connection with the Project, including for the avoidance of doubt, records generated by its Staff under Clause 3.2 and by any third party collaborators to the Project appointed under Clause 5.

- 4.3 The Organisation shall ensure that data reported to BHF which are relevant to the progress of the Project are reliable, accurate and not misleading.

- 4.4 The Organisation shall procure that the Principal Investigator monitors the work carried out under the Project for material that may be the subject of Project Inventions and shall promptly notify BHF of any such Project Invention. In addition to any Milestone Report or the End of Award Report, Organisation shall provide information or reports on progress in any manner or frequency reasonably requested by BHF at any time during the Project.

- 4.5 The BHF uses Researchfish to collect data on outcomes and impacts arising from its awards. Organisation shall submit once annually, such information as requested by Researchfish that relates to the Project, subject at all time to clause 10.1, from the start of the grant up until five years after grant closure.

5 PROJECT COLLABORATORS AND SUBCONTRACTORS

- 5.1 If the Organisation wishes to use a third party collaborator or sub-contractor to conduct any part of the Project, it shall seek the consent of BHF unless such sub-contractor or collaborator is specified in the Plan. The Organisation shall ensure in all cases that any collaborations or sub-contracts shall be on the following terms:
- (a) That the third party shall not have any rights to any results emerging from such work, and all such results shall as between the Parties and the third party be deemed to be Project Intellectual Property and owned in accordance with the provisions of this Agreement;
 - (b) That the third party shall be under obligations of confidence concerning such results on terms equivalent to those set out under this Agreement;
 - (c) That the third party shall keep detailed records including scientific notebooks of all of its activities and upon request by BHF shall make available copies to BHF of such records and any associated data to BHF (such disclosure not to constitute a breach of confidentiality by the third party);
 - (d) That the third party will upon reasonable request by BHF make available its employees and/or consultants for discussion with BHF; and
 - (e) That the provisions of such sub-contract or collaboration agreement shall be consistent with the milestone nature of the Award and the termination provisions of this Agreement, and shall terminate if this Agreement terminates.

6 INTELLECTUAL PROPERTY - OWNERSHIP AND PROTECTION

- 6.1 In the event that any Project Intellectual Property arises, it shall be the property of the Organisation. Any Project Patents arising from the Project Intellectual Property shall be applied for in the name of the Organisation, or its delegated nominee. Organisation shall be responsible for seeking and maintaining protection for Project Intellectual Property at its sole cost, including the filing, conduct, prosecution and maintenance of all patents arising in respect of Project Inventions.
- 6.2 If Organisation chooses not to pursue filing, prosecution or maintenance of any Project Patents in any country, it shall immediately notify BHF of this fact in writing. BHF shall be entitled, but not obliged, at its own cost, to pursue or maintain such Project Patents in the relevant country or countries in the Organisation's name and Organisation shall provide such assistance to BHF at BHF's sole cost as may reasonably be required by BHF in order to do so.
- 6.3 If BHF decides to exploit the Project Intellectual Property pursuant to clause 6.2, Organisation shall (and shall procure that the Principal Investigator shall) execute such further documents, take such action and do such things as may be reasonably requested by BHF at BHF's cost to secure the right of BHF to protect, maintain, manage, defend, enforce and exploit the Project Intellectual Property.
- 6.4 Subject to Clause 7 and pursuant to clauses 6.2 and 6.3 above, the Organisation reserves the non-exclusive, royalty-free, sub-licensable right to use the Project Intellectual Property and Project Inventions for the purposes only of its own internal academic teaching, publication and academic research purposes, provided that such research is not carried out in collaboration with or for the benefit of any commercial third party.

- 6.5 The Organisation shall, where it is reasonably able to do so, make the Background Intellectual Property available for use in the Project and for the protection or exploitation of the Project Intellectual Property. Unless otherwise agreed in writing with BHF, the Organisation shall retain responsibility for seeking and maintaining protection for the Background Intellectual Property at its own cost. If the Organisation chooses not to pursue filing, prosecution, maintenance, defence or enforcement of any patent rights that are Background Intellectual Property in any country, it shall give BHF at least three (3) months' notice of this fact in writing. During the three-month notice period, the Organisation shall continue to seek and maintain such patent rights. BHF shall be entitled, but not obliged, at its own cost, to assume responsibility (on behalf of the Organisation) for filing, prosecuting, maintaining, defending or enforcing such patent rights in the relevant country or countries in the Organisation's name and the Organisation shall provide such assistance to BHF (at BHF's cost) as BHF may reasonably require in order to do so.

7 INTELLECTUAL PROPERTY - MANAGEMENT AND EXPLOITATION

- 7.1 Subject to the provisions of clause 7.2:

- (a) Organisation shall be the Exploiting Party and shall use its reasonable efforts to manage the commercialisation and exploitation of the Project Intellectual Property;
- (b) Organisation shall make any and all decisions in relation to the negotiation, acceptance and conclusion of terms for any agreement regarding the translation, development and exploitation of the Project Intellectual Property in consultation with BHF and inform BHF, in advance, of all substantive steps which it intends to take in relation to the above and obtain the written consent of BHF, said consent not to be unreasonably withheld or delayed, prior to entering into any agreements granting any rights over the Project Intellectual Property.

- 7.2 In the event that:

- (a) Organisation fails to take steps to commercialise or exploit any of the Project Patents by the date sixty (60) months from the filing date of such Project Patent; or
- (b) if at any time Organisation notifies BHF in writing that it has decided not to exploit any Project Intellectual Property,

then BHF shall have the option (by serving written notice on Organisation) to commercialise and exploit the Project Intellectual Property instead of Organisation, such exploitation to be subject to the provisions of Clause 6 (Intellectual Property, Ownership and Protection), Clause 7 (Intellectual Property - Management and Exploitation) and Clause 8 (Infringement) of this Agreement.

- 7.3 Prior to the exploitation of any Project Intellectual Property the Parties shall enter into a separate revenue and/or equity sharing agreement to detail how any such benefits are managed and shared. As a condition of granting consent to exploit the Project Intellectual Property, the BHF will require the Organisation to accept the standard revenue and equity sharing terms of BHF which are in place at that time.
- 7.4 The Organisation accepts that in order to exploit the Project Intellectual Property and Project Patents, it may be necessary or useful to grant a licence to the Background Intellectual Property and it shall grant such a licence (to the extent that this does not conflict with any pre-existing third party rights). Any such

licence grant shall be non-exclusive, free of charge and only to the extent necessary or useful to exploit the Project Intellectual Property and Project Patents.

- 7.5 If any exploitation of the Project Intellectual Property results in the acquisition of any Equity Holding (for example, but without limitation, because the Project Intellectual Property is assigned or licensed to a corporate vehicle spun out of the Organisation) then the following principles shall apply:
- (a) the Exploiting Party shall take the lead in connection with the finding of potential investors and in negotiation of the transaction resulting in the Equity Holding;
 - (b) the Exploiting Party shall require at its discretion either (i) observer status for meetings of the board of directors (including the right to receive copies of board minutes and board papers), or (ii) actual board membership; and
 - (c) the Organisation and BHF each accepts that the Exploiting Party will have to assign or license the Project Intellectual Property into such a corporate vehicle.
- 7.6 The Organisation shall procure that the Principal Investigator and other members of its Staff who contributed to the creation of Project Intellectual Property will give all reasonable assistance to the Exploiting Party in relation to the commercialisation and exploitation of the Project Intellectual Property and (if applicable) the Background Intellectual Property, including:
- (a) executing any necessary documents; and
 - (b) assisting in the transfer of Know-How generated in the course of the Project to a third party licensee or corporate vehicle.
- 7.7 Organisation shall ensure that the Principal Investigator and its employees or agents involved in the Project shall act at all times to preserve the value and integrity of the data, results or findings of the Project and shall not grant any rights or restrictions over any Project Intellectual Property, or the use or exploitation thereof, without the prior consent of BHF.
- 7.8 Organisation acknowledges and agrees that it shall ensure that the Principal Investigator and any employee or agent of Organisation involved in negotiations for the exploitation of the Project Intellectual Property shall at all times act in a way to avoid conflicts of interest and ensure that any arrangement is in the best interests of both the Organisation and BHF. No agreement for exploitation shall unfairly benefit any employee or agent of the Organisation to the detriment of BHF.
- 7.9 Organisation shall ensure that the integrity and independence of the Principal Investigator and any other employees of Organisation involved in the Project (“Relevant Employees”) shall not be compromised by any commercial involvement any and all of them may have.
- 7.10 BHF is concerned to ensure that the useful results of research funds are applied for the public benefit (i.e. any private benefit should only be incidental to the public benefit achieved) and that the integrity and independence of researchers funded (in whole or in part) by BHF is not compromised by any commercial involvement which they may have. Therefore the Organisation shall ensure that no consultancies, third party restrictions or arrangements are entered into in relation to any BHF funded person or activity except as provided in these conditions and in accordance with any BHF policy on the relationship between BHF funded

researchers and commercial organisations in place from time to time

- 7.11 Relevant Employees may offer services as consultants or non-executive directors to commercial organisations provided that the consultancy or directorship they undertake is limited to the provision of advice and exchange of ideas and must not include research or supervision of research. A consultancy or directorship must not enable a commercial organisation to gain inappropriate access to unpublished data, findings or conclusions from any BHF funded research. The terms of each consultancy or directorship must be set out in a written agreement between the Relevant Employee and the commercial organisation and must be submitted for review and approval in advance to the Institution in accordance with Condition 7.12
- 7.12 The Organisation is required to review in advance all proposed agreements involving any Relevant Employee (including BHF Chair Holders), to ensure that the agreements are consistent with these conditions of grant. If the Organisation has any concern about the commercial involvement or otherwise of any Relevant Employee, it must promptly notify BHF of that concern in writing. BHF reserves the right to review any proposed or existing agreement if it believes it could have an effect on BHF's charitable activities or interests and/or the Award, and the Organisation agrees to provide copies of such agreements, as requested by BHF.

8 INFRINGEMENT

- 8.1 The Organisation shall immediately give notice to BHF if it or its Staff (together with any of its relevant administrative or technology transfer staff involved in monitoring the Project) becomes aware of:
- (a) any infringement of the Background Intellectual Property or Project Intellectual Property; or
 - (b) any claim by a third party that an action carried out under the Project infringes the Intellectual Property or other rights of any third party.
- 8.2 In respect of any Background Intellectual Property or Project Intellectual Property, where any infringement or suspected infringement arises, or a claim by a third party alleging infringement of that third party's Intellectual Property or other rights arises, then Organisation may take all such action as it shall consider to be necessary or appropriate at its discretion and expense to bring or defend an action on behalf of the Organisation.
- 8.3 If any enforcement or defence action by the Organisation results in the recovery of legal costs and/or an award of damages, such sums after deduction of legal and associated costs shall be distributed in accordance with the revenue and equity sharing agreement referred to in Clause 7.3.

9 AUDIT

- 9.1 The Organisation shall procure that the control of expenditure to be funded under the Award is governed by the normal standards and procedures of the Organisation and is covered by the formal audit arrangements that exist in the Organisation. BHF shall have the right to ask for confirmation from the external auditors of the Organisation that the external auditors have signed their opinion on the annual accounts of the Organisation without qualification and the management letter from the auditors raises no matters that did or could significantly affect the administration of grants awarded by BHF. If the auditors have raised any such matters in their management letter, BHF may require the Organisation to provide it

with relevant extracts from the letter.

- 9.2 The Organisation shall provide access to accounting and other financial records relating to the Award and the activities funded by it for auditors and other personnel from or appointed by BHF at any time (at BHF's expense), if requested. Such access shall include the right to inspect, after giving reasonable prior notice, any equipment or facilities acquired or funded under the Award. Where elements of expenditure under the Award have been subcontracted, the Organisation shall ensure that the right of access extends to the accounts and records of any such subcontractor.
- 9.3 BHF shall have the right, at its discretion and expense, to audit (directly or via third parties engaged by it) the Award and the income and expenditure on the activities funded by the Award and/or the systems used by the Organisation to administer BHF grants generally at any time.

10 PUBLICATIONS

- 10.1 Before any non-confidential publication or disclosure of, or reference to the Project intellectual Property or Project Inventions ("Project IPR") is made by either the Organisation or BHF, both parties shall jointly have due regard to the potential future exploitation of the Project IPR. No non-confidential publication, disclosure or reference to the Project IPR shall be made by either party or their employees, agents or sub-contractors that would unreasonably prejudice the then current or future commercialisation of the Project IPR. Prior to any non-confidential publication or disclosure being made the party making the disclosure shall pass the publication to the other party for review.
- 10.2 Following publication by Organisation of any patent filed hereto, the Organisation shall have the right to publish and reproduce any such publication freely with due acknowledgement of the source.
- 10.3 A copy of the final manuscript of all research publications that relate to the Project must be deposited into PubMed Central upon acceptance for publication, to be made freely available as soon as possible and in any event no later than six (6) months after the journal publisher's official date of final publication.

11 ANNOUNCEMENTS

- 11.1 Save as required by law or any competent regulatory authority no announcement concerning this Agreement or its subject matter shall be made by any of the Parties without the prior written approval of BHF, save that BHF shall be permitted to publish summary details of the Project including the name of the Principal Investigator, the name of the Organisation, the title of the Project, the Award Amount and a brief summary of the Project.

12 CONFIDENTIALITY

- 12.1 Subject to Clauses 12.2 to 12.6 (inclusive) each Party undertakes that both during this Agreement and for a period of ten (10) years after its termination, it shall keep confidential and not disclose to any person (other than to its officers, employees, consultants or professional advisors whose province it is to know), any Confidential Information of another party disclosed to or obtained by it in connection with this Agreement. Each Party shall take all reasonable security precautions in relation to the Confidential Information under its control.

- 12.2 The Organisation shall only disclose the Confidential Information to those of its Staff (together with its administrative or technology transfer staff involved in monitoring the Project) who need to know it strictly for the purposes of the Project and the administration of the Award, provided that they are bound by confidentiality and non-use obligations in respect of such Confidential Information and are first made aware of the Organisation's confidentiality obligations towards BHF.
- 12.3 If the Organisation considers it necessary for the purpose of the Project to disclose the Confidential Information to employees, officers, students, visiting academics, contractors, sub-contractors, independent consultants or third parties who are not members of the Organisation's Staff undertaking the Project, then before any such disclosure takes place the Organisation shall procure that each of the persons concerned are bound by confidentiality and non-use obligations in respect of such Confidential Information and are first made aware of the Organisation's confidentiality obligations towards BHF.
- 12.4 Without prejudice to Clause 12.1, and save in the case of publication in which case the provisions of Clause 10 shall apply, the Parties shall each use reasonable endeavours to keep details of any Project Inventions confidential pending filing of a patent application claiming such Project Invention.
- 12.5 Clause 12.1 shall not apply to:
- (a) information which is or was already known to the receiving party at the time of disclosure under this Agreement, as shown by the receiving party's written records, without any obligation to keep it confidential;
 - (b) information which is independently developed by employees of the receiving party who have not had access to the confidential information of the disclosing party;
 - (c) information which at the time of being disclosed or obtained by the receiving party under this Agreement or at any time thereafter, is published or otherwise generally available to the public other than due to default by the receiving party of its obligations hereunder;
 - (d) the disclosure of information by BHF for the purposes of publishing summary details of awards made by BHF consisting of the name of the Organisation, the name of the Principal Investigator, the title of the Project and the amount of the Award;
 - (e) the disclosure to a Party's professional advisers of information reasonably required to be disclosed for purposes relating to this Agreement, or
 - (f) information which is required to be disclosed by a competent Court or regulatory authority or otherwise by applicable law (including any requirements for disclosure under the Freedom of Information Act 2000), provided that where it is free to do so, the receiving party shall give notice of such disclosure as soon as reasonably practicable. Where such disclosure of information is required under the Freedom of Information Act 2000 from the Organisation and such information relates to BHF, the Organisation shall notify BHF within five (5) Business Days of receiving an information request that such a request has been made and the details thereof. The Organisation shall allow five (5) Business Days to consult with and, to the extent permitted by law, shall take into account any representations made by BHF before such information is disclosed to the requestor and shall on request provide an update of the status of the Organisation's response and the information that it is intending to disclose.

12.6 Each Party shall ensure that all personnel and third parties to whom Confidential Information of the other Party is disclosed are informed of the provisions of Clauses 10 (Publications), 11 (Announcements) and Clause 12 (Confidentiality).

13 **WARRANTIES AND INDEMNITIES**

13.1 BHF warrants that:

- (a) it has the requisite authority to enter into this Agreement; and
- (b) it has full power and authority to assume all of its obligations under this Agreement.

13.2 The Organisation warrants that:

- (a) it has the requisite authority to enter into this Agreement;
- (b) it has full power and authority to assume all of its obligations under this Agreement; and
- (c) to the best of its knowledge and belief:
 - (i) it is the legal and beneficial owner of all right, title and interest in and to the Background Intellectual Property, and will be the legal and beneficial owner of all right, title and interest in and to the Project Inventions and Project Intellectual Property;
 - (ii) it has not granted any third party any right in respect of the Project Inventions or Project Intellectual Property (other than in accordance with the terms of this Agreement), and has not charged or encumbered and will not charge or encumber any of the same;
 - (iii) the Background Intellectual Property and Project Intellectual Property are not subject to any claim, opposition, attack, assertion or other arrangements of whatever nature which may impugn upon the use, validity, enforceability or ownership of any such Intellectual Property, and there are no grounds or other circumstances which may give rise to the same;
 - (iv) the Organisation has not itself nor through any of its staff, including its officers, agents, employees, students, contractors, sub-contractors, independent consultants or otherwise, disclosed to any third party (other than under appropriate confidentiality obligations) any Confidential Information and/or Know-How relating to the Project, nor is it obliged so to do;
 - (v) no person has, or will have, the right to call for the assignment or grant of a licence to it of any of the Background Intellectual Property or the Project Intellectual Property under any option, grant, funding award or other agreement, nor is there any conditional or unconditional agreement or circumstance whereby such a right may arise;
 - (vi) no person has any right or claim to any payment or other compensation in respect of the use or exploitation of the Background Intellectual Property or the Project Intellectual Property;

- (vii) there are no outstanding or potential claims against the Organisation under any contract or under Section 40 of the Patents Act 1977 for employee compensation in relation to the Background Intellectual Property, nor is the Organisation aware of any reason why any such claims may be made in relation to the Project Intellectual Property; and
- (viii) it has disclosed all pre-existing arrangements that would have material impact on the performance of its obligations under this Agreement and any arrangements with any commercial entity that manufactures, distributes or sells tobacco products or related items.
- (ix) it is not directly or indirectly involved in the production, marketing or sale of tobacco products in any country ("**Restricted Business**");
- (x) it does not derive its income (other than an insignificant or de minimis part) from acting as the main or a significant advisor or consultant to a business that produces, markets or sells tobacco products in any country ("**Restricted Activity**"); and
- (xi) it does not have at the Commencement Date nor will they have during the life of this Agreement any commercial relationship with, nor sponsorship, support or other contact or arrangement with any individual, entity, organisation or brand owner that:
 - (i) is a Restricted Business; or
 - (ii) carries out any Restricted Activity; or
 - (iii) is in the Funder's reasonable opinion otherwise incompatible with its charitable heart health aims and objectives.

- 13.3 Except as expressly provided in this Agreement, none of the Parties gives any warranties or makes any representations with respect to any of the Project Intellectual Property and/or Background Intellectual Property or any products derived from them, or their fitness for any purpose, or that any material produced or supplied by any Party and any processes or techniques used, proposed or recommended by any Party will not infringe any patent or other intellectual property rights of any person in any country.
- 13.4 Subject to Clause 13.6, BHF's maximum liability in aggregate to the Organisation arising out of this Agreement shall not exceed the Award Amount.
- 13.5 Except in circumstances of fraud or wilful misconduct by a Party or its Affiliates, no Party or any of its Affiliates shall be liable to another Party or any Affiliate of another Party for special, indirect, incidental or consequential damages, whether in contract, warranty, negligence, tort, strict liability or otherwise, arising out of any breach of or failure to perform any of the provisions of this Agreement.
- 13.6 Nothing in this Agreement shall limit the liability of any Party in respect of:
- (a) personal injury or death arising out of that Party's negligence or wilful misconduct; or
 - (b) fraud or fraudulent misrepresentation.

14 DURATION AND TERMINATION

- 14.1 This Agreement shall commence on the Effective Date and shall continue for whichever is the longer of:
- (a) the term of the funding as set out in the Acceptance Letter, and, if applicable, any further funding granted by BHF in connection with or as a result of the Project;
 - (b) the period that the Project takes to complete;
 - (c) the last to expire of the Project Patents;
 - (d) the expiry of any agreement entered into for the exploitation of the Project Intellectual Property or the Background Intellectual Property; or
 - (e) the expiry of any payment obligation relating to the exploitation of the Project Intellectual Property or the Background Intellectual Property.
- 14.2 Either Party ("**Terminating Party**") shall have the right to terminate this Agreement forthwith at any time upon giving written notice of termination to the other Party ("**Defaulting Party**"), upon the occurrence of any of the following events:
- (a) the Defaulting Party commits a breach of a material obligation set out in this Agreement which is not capable of remedy;
 - (b) the Defaulting Party commits a breach of a material obligation set out in this Agreement which is capable of remedy but has not been remedied within thirty (30) Business Days of the receipt by it of a notice from the Terminating Party identifying the breach and requiring its remedy;
 - (c) the Defaulting Party is unable or admits inability to pay its debts as they fall due,

suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;

- (d) a proposal is made or a nominee or supervisor is appointed for a composition in satisfaction of the debts of the Defaulting Party or a scheme or voluntary arrangement of its affairs within the meaning of the relevant bankruptcy or insolvency laws, or the Defaulting Party enters into any composition or voluntary arrangement for the benefit of its creditors, or proceedings are commenced in relation to the Defaulting Party under any law, regulation or procedure relating to the re-construction, deferment or re-adjustment of all or substantially all of the Defaulting Party's debts;
 - (e) the Defaulting Party takes any action, or any legal proceedings are started whether by a third party or not, for the purpose of the winding up or dissolution of the Defaulting Party, other than for a solvent reconstruction or amalgamation;
 - (f) the appointment of a liquidator, trustee, receiver, administrative receiver, receiver and manager, interim receiver custodian, sequestrator, administrator or similar officer, in respect of all or a substantial part of the assets of the Defaulting Party;
 - (g) an effective resolution being passed for the winding-up or entering into administration (whether out of court or otherwise) of the Defaulting Party;
 - (h) a distress, execution or other legal process being levied against all or substantially all of the assets of the Defaulting Party, and not being discharged or paid out in full within ten (10) Business Days of the commencement of each process; or
 - (i) the occurrence in respect of the Defaulting Party of any event in any jurisdiction to which it is subject having an effect similar to that of any of the events referred to in Clauses 14.2(c) to 14.2(h) (inclusive).
- 14.3 BHF may terminate the Award immediately on written notice to Organisation if Organisation, Principal Investigator or any employee or agent of Organisation involved in the Project by any act, thing or omission adversely affects or is likely to adversely affect BHF's name, reputation or value or brings BHF into disrepute in the reasonable opinion of BHF.
- 14.4 If the Principal Investigator ceases to be involved with the Project, ceases to be employed by or provide services to the Organisation, ceases to carry out research at premises controlled by the Organisation, or is prevented through illness or injury from promptly fulfilling his obligations under it, BHF shall consult with the Organisation to ascertain whether the Project or its progress will be jeopardised by such event. If in the reasonable opinion of BHF:
- (a) such event will jeopardise the Project or its progress, BHF may terminate this Agreement by written notice; or
 - (b) the Project has reached a stage such that the services of the Principal Investigator are not key to the completion of the Project, BHF and the Organisation shall negotiate in good faith any amendments necessary to this Agreement so as to enable the satisfactory completion of the Project within a reasonable time.
- 14.5 If the performance by either Party of any of its obligations under this Agreement (except (i) a payment obligation or (ii) the circumstances set out are governed by

such Clause) is delayed or prevented by circumstances beyond its reasonable control, that Party will not be in breach of this Agreement because of that delay in performance. In such event, the Party unable to fulfil its obligations shall immediately give notice of this to the other Party and shall use reasonable efforts to resume full performance. However, if the delay in performance is more than six (6) months, the other Party may terminate this Agreement with immediate effect by giving written notice.

- 14.6 For the avoidance of doubt, this Agreement shall not come into force unless and until the it is signed by BHF and Organisation.

15 EFFECT OF TERMINATION

- 15.1 Termination of this Agreement howsoever arising shall be without prejudice to the rights and duties of any Party accrued prior to termination. The Clauses in this Agreement which expressly or impliedly have effect after or notwithstanding termination (including Clauses 2 (Project Funding and Obligations), 3 (Project Staff and Conduct), 6 (Intellectual Property - Ownership and Protection), 7 (Intellectual Property - Management and Exploitation), 10 (Publications), 11 (Announcements), 12 (Confidentiality), 13 (Warranties and Indemnities) and 15 (Effect of Termination)) shall continue to be enforceable notwithstanding termination.

- 15.2 Upon termination prior to the end of the Project pursuant to Clauses 14.2 to 14.4 (inclusive), the Organisation shall return all funding received from BHF under this Agreement which is unspent at the date of termination (after deduction of costs and non-cancellable commitments incurred prior to the date of termination).

16 WAIVER

- 16.1 No Party shall be deemed to have waived any of its rights or remedies under this Agreement unless the waiver is expressly made in writing and signed by a duly authorised representative of that Party. In particular, no delay or failure of any Party in exercising or enforcing any of its rights or remedies under this Agreement shall operate as a waiver of those rights or remedies nor shall any single or partial exercise or enforcement of any right or remedy by any Party preclude or impair any other exercise or enforcement of that right or remedy by that Party.

17 ENTIRE AGREEMENT/VARIATIONS

- 17.1 This Agreement, together with the Application, Award Letter and any revenue and equity sharing agreement entered into pursuant to Clause 7 constitutes the entire agreement and understanding between the Parties relating to the subject matter hereof and together they supersede and replace all prior drafts, previous understandings, arrangements, representations or agreements, whether in writing or oral, between the Parties relating to the subject matter of this Agreement.

- 17.2 No variation, amendment, modification or supplement to this Agreement shall be valid unless and until it is made in writing and signed by a duly authorised representative of each Party.

18 ASSIGNMENT

- 18.1 No Party shall without the prior written consent of the other Party assign, transfer, convey or declare a trust over this Agreement or make any other disposition

(whether in whole or in part) of any of its rights and obligations hereunder to any third party.

19 SEVERANCE OF TERMS

- 19.1 If the whole or any part of this Agreement is or becomes or is declared illegal, invalid or unenforceable in any jurisdiction for any reason (including both by reason of the provisions of any legislation and also by reason of any court or competent authority which either has jurisdiction over this Agreement or has jurisdiction over any Party):
- (a) In the case of the illegality, invalidity or un-enforceability of the whole of this Agreement it shall terminate only in relation to the jurisdiction in question; or
 - (b) In the case of the illegality, invalidity or un-enforceability of part of this Agreement that part shall be severed from this Agreement in the jurisdiction in question and that illegality, invalidity or un-enforceability shall not in any way whatsoever prejudice or affect the remaining parts of this Agreement, which shall continue in full force and effect.
- 19.2 If in the reasonable opinion of any Party any severance under this Clause 19 materially affects the commercial basis of this Agreement, the Parties shall discuss, in good faith, ways to eliminate the material effect.

20 COSTS

- 20.1 Each Party shall bear its own legal costs, legal fees and other expenses incurred in the preparation, negotiation and execution of this Agreement.

21 FURTHER ASSURANCES

- 21.1 Each Party shall perform such acts and execute such documents as may be reasonably required for securing to or vesting in another Party the rights agreed to be granted to it under or pursuant to this Agreement.

22 NOTICES

- 22.1 Any notice to be given pursuant to this Agreement shall be in writing in the English language and shall be delivered by overnight courier, by registered, recorded delivery or certified mail (postage prepaid) or by facsimile confirmed by registered, recorded delivery or certified mail (postage prepaid) to the address or facsimile number of the recipient Party set out below or such other address or facsimile number as a Party may from time to time designate by written notice to the other Parties. Any notice by facsimile shall be confirmed by the sender sending a confirmatory copy of the notice by registered, recorded delivery or certified mail (postage prepaid).

Address of Organisation

[Address]

[Address]

[Address]

for the attention of: [Name]

Address of BHF

Greater London House

180 Hampstead Road
London, NW1 7AW

for the attention of: The Company Secretary

with a copy to: The Medical Director

22.2 Any notice given pursuant to this Clause 22 shall be deemed to have been received in the case of delivery by courier or sending by certified mail, on the day of receipt, provided receipt occurs on a Business Day of the recipient Party or otherwise on the next following Business Day of the recipient.

22.3 Any notice that is required in this Agreement shall be valid if sent by post in accordance with Clause 22. The Parties agree that email is not a valid method of giving notice under this Agreement.

23 GENERAL

23.1 Nothing in this Agreement shall be taken to constitute a partnership between the Parties. Except as specifically provided in this Agreement, no Party shall by reason of this Agreement be empowered to act as agent for any other party nor to pledge the credit of any other party nor shall any Party be held liable for or incur liability in respect of the acts or defaults of any other Party to this Agreement.

23.2 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same instrument.

23.3 A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

23.4 Neither Party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for more than eight weeks, the Party not affected may terminate this agreement by giving 30 days' written notice to the other Party.

24 DATA PROTECTION

24.1 BHF, all signatories, Grant Holders and the Organisation shall comply with their obligations under applicable data protection legislation, including, as applicable, the Data Protection Act 2018 and General Data Protection Regulation ("GDPR") (or its equivalent implementing legislation) and including where applicable the guidance and codes of practice issued by the Information Commissioner or any other relevant regulator. Any data protection terms in this clause shall have the meaning ascribed to them by the GDPR.

24.2 BHF and all signatories, Grant Holders and the Organisation agree that any processing operations under the Conditions of Grant conform to the description set out in Schedule 1.

25 **GOVERNING LAW**

- 25.1 This Agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of this Agreement or its formation) shall be governed by and construed in accordance with the laws of England. The Parties irrevocably submit to the exclusive jurisdiction of the Courts of England provided that nothing in this clause shall prevent any Party from seeking injunctive relief in any court of competent jurisdiction in respect of a breach or threatened breach of Clause 12 (Confidentiality).

Feb 2019 (schedule 1, items 2.21 and 24 amended, schedules 2, 3 and item 2.9 inserted)

IN WITNESS whereof the Parties through their duly authorised representatives have executed this Agreement.

Signed for and on behalf of
[ORGANISATION]
by its duly authorised representative:

Signature:

Name:

Title:

Date:

Signed for and on behalf of
**[ORGANISATION, IF SECOND
SIGNATURE REQUIRED]**
by its duly authorised representative:

Signature:

Name:

Title:

Date:

Signed for and on behalf of
BRITISH HEART FOUNDATION
by its duly authorised representative:

Signature:

Name:

Title:

Date:

SCHEDULE 1

SCHEDULE 1 - DATA PROTECTION

BHF as Data Controller

BHF is required to process personal data in order to process the application and/or Grant, for the purposes of audit, evaluation, management and for promoting the work of BHF and the Grant.

This personal data shall include information relating to staff, applicants, co-applicants, principal investigators, and other individuals involved in the research conducted under the Grant. It shall include such information as names, job titles, work email addresses, CVs, salaries, contact information and workplace incidents.

Personal data relating to the applicant(s) and/or individuals funded by the Grant may be disclosed to and processed by external peer reviewers, government and other research bodies some of whom may be based outside the European Economic Area.

BHF may publish personal data of the Grant Holder(s) and others funded by BHF and the title and abstract of the subject matter of any Grant on its website or in its annual report or other publications from time to time.

The Organisation as Data Controller

The Organisation will be the Data Controller for all personal data processed under the Grant.

SCHEDULE 2

Policy on Bullying and Harassment

BHF considers bullying and harassment of any kind, in any context, to be unacceptable. We believe that all people working at BHF or involved in BHF-funded activities should be able to work in an environment where everyone is treated, and treats others, fairly and with respect.

1. Bullying and harassment

Bullying is any offensive, intimidating, malicious or insulting behaviour. It involves the misuse of power and can make the person being bullied feel vulnerable, upset, humiliated, undermined or threatened.

Harassment is any unwanted physical, verbal or non-verbal conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. It may be persistent or a single incident.

2. What we expect from people involved in BHF funding

We expect all participants involved in BHF funding to treat each other with dignity and respect. Participants include:

- grant holders
- co-investigators
- supervisors
- research staff
- students
- fieldworkers
- collaborators
- consultants
- sub-awardees

By approving a grant application for submission, all signatories confirm to the best of their knowledge that there are no active sanctions in place relating to bullying or harassment against the principal investigator or supervisor(s), co-investigator(s), or any named research staff employed by the organisation. If there are, the BHF's Head of Research Funds should be informed in confidence via email at researchintegrity@bhf.org.uk, and we may reject the application or ask that the relevant individual(s) be removed from it.

3. What we expect from the organisations we fund

It is the organisation's responsibility to:

1. Have a policy in place that clearly sets out:
 - the standards of behaviour it expects from staff
 - its procedure for responding to complaints, including a first point of contact

The policy should be available to all staff and ideally published on the organisation's intranet.

2. Make sure there is an equivalent policy in place at any sub-awardee organisation, if relevant.
3. Investigate allegations of bullying and harassment in an impartial, fair and timely manner, ensuring the rights of employees involved are protected and take appropriate action.
4. Tell the BHF's Head of Research Funds via email at researchintegrity@bhf.org.uk when a decision is made to formally investigate an allegation of bullying or harassment and subsequently the outcome of the investigation.

This applies to any employee at the organisation who is associated with:

- a grant application (principal applicant, supervisor, co-applicant, named research staff)
 - a BHF grant (see the list of participants above)
5. When an investigation is completed, tell BHF's Head of Research Funds via email at researchintegrity@bhf.org.uk whether the allegation was upheld, and if so, the findings of the investigation, and any sanctions. We consider it important that, wherever possible, organisations see an investigation through to its conclusion, including any disciplinary procedures, and document the findings, even where the subject of the investigation resigns during the process.

The information you provide should **only** include:

- the name of the person against whom a formal investigation has commenced
- the person's connection to the BHF (e.g. grant reference no)
- a brief factual statement about the nature of the allegation (e.g. bullying junior members of staff in a research group)
- the date the complaint was lodged, start date of the investigation and expected completion date
- When completed, the completion date and a brief factual statement on the outcome of the investigation, including any sanctions.

The information you provide should **not** include any:

- sensitive personal information, e.g. relating to criminal offences or convictions
- personal information about other people, e.g. the person making the claim.

Any information you send to us will be:

- stored in accordance with data protection law requirements
- communicated on a need-to-know, restricted-access basis only
- updated and/or deleted in line with our retention policy

4. Sanctions

If an organisation upholds a bullying or harassment allegation, we may apply our own sanctions.

These will be independent of any set by the organisation. We may:

- send a letter of concern

- where the person remains in post, require them to attend workplace behaviour training before continuing on the grant or applying for further BHF funding
- remove the person from the affected grant(s)
- withdraw funding from the grant holder. We will work with the organisation to minimise any impact on staff on the affected grant(s), which may include transfer to another investigator
- bar the person from being a PhD supervisor on organisational BHF PhD programmes or other, or from receiving funding through other BHF organisational awards
- temporarily or permanently restrict the person from future grant applications (or specific types of grant applications)
- allow future grant applications, but require the organisation to monitor the way the person manages staff
- take any further sanctions at our own discretion

We may apply sanctions against a BHF-funded organisation if we find that it has failed to:

- respond to a bullying and/or harassment complaint promptly and objectively
- keep BHF informed
- there has been organisational-level failure to complete disciplinary procedures
- there has been a serious organisational-level failure to effectively ensure appropriate workplace conduct standards are observed

Sanctions may include:

- not accepting new grant applications for a limited period of time
- restricting applications for specific grant types, e.g. not allowing participation in BHF PhD programmes
- suspending funding to the organisation in extreme cases

5. How BHF handles allegations

Allegations should be reported to the employing organisation of the person against whom the allegation is being made. It is their responsibility to investigate. If an allegation of bullying or harassment is made directly to a member of BHF staff rather than to the organisation, we may:

- discuss the circumstances with the informant
- encourage the informant to report the allegation to the organisation through the appropriate channels
- or tell an appropriate individual at the organisation ourselves

If an informant wants to remain anonymous, we will respect this unless we have a legal obligation to reveal their identity. We'll tell the informant before we do this.

The organisation is then responsible for following its procedures for handling allegations.

We will reserve any judgement about an allegation until the investigation is complete. We will only provide information to our staff or external advisers on a need-to-know basis.

6. BHF's role in any investigation

BHF does not carry out its own investigations, but we may:

- ask for information about an organisation's processes and how they are effectively implemented
- check that an organisation has a policy and is following it
- request a copy of the final investigation report

Where we exercise our right to see the above information, we expect organisations to be able to share this information. BHF strongly discourages the inappropriate use of non-disclosure agreements that might prevent organisations from sharing this information with us.

SCHEDULE 3

Policy on Research Misconduct and Fraud

The British Heart Foundation (BHF) is committed to ensuring high standards of research integrity and practice in the research it funds. As part of this, we expect researchers to follow BHF policies that support a constructive research environment, such as our policy on bullying and harassment outlined in schedule 2. We also expect UK research organisations to follow the Universities UK [concordat to support research integrity](#), and those outside the UK to follow appropriate guidelines of a similar standard.

We use the concordat's definition of research misconduct, and we expect the organisations that we fund to do the same.

The concordat defines misconduct as "behaviour or actions that fall short of the standards of ethics, research and scholarship required to ensure that the integrity of research is upheld." This includes fabrication, falsification, plagiarism or deception in performing or reviewing research, and in reporting research outputs.

For example, omitting relevant data, manipulating images, or misusing data by deliberately attempting to re-identify people from research data are all research misconduct.

It does not include honest differences in the design, execution or interpretation in evaluating research methods or results, or research of poor quality unless this encompasses the intention to deceive.

1. What we expect from people involved in BHF funding

We expect all participants involved in BHF funding to treat each other with dignity and respect. By approving a grant application for submission, all signatories confirm to the best of their knowledge that there are no current active sanctions in place relating to research misconduct against the principal investigator or supervisor(s), co-investigator(s), or any named research staff employed by the organisation. If there are, the BHF's Head of Research Funds should be informed in confidence via email at researchintegrity@bhf.org.uk, and we may reject the application or ask that the relevant individual(s) be removed from it.

2. What we expect from the organisations we fund

BHF requires organisations to investigate all allegations of research misconduct involving researchers that we fund, and to have formal written procedures for handling these allegations. It is the responsibility of the organisation to:

- Identify a senior member of staff to act as a first point of contact for anyone wanting to raise issues relating to research misconduct at the organisation.
- Carry out an impartial, fair and timely investigation of all allegations of research misconduct made against its staff and students.
- Inform the BHF's Head of Research Funds in confidence via email at researchintegrity@bhf.org.uk when a decision is made to formally investigate an allegation of research misconduct made against employees at the organisation who are funded by BHF or have an application for funding under consideration. Information on the category of research misconduct and the investigation process must be provided. This should be done at the point at which a decision is made to conduct an investigation, preliminary or otherwise. If there is a full investigation, the organisation must tell BHF the name of the respondent, in confidence.

- Keep BHF informed during the process of investigation of allegations of research misconduct. We may choose to send a representative to observe any formal inquiry. Investigations should conclude within one year of receiving the allegation.
- Inform BHF of the outcome of the investigation as soon as it is known and provide us with the final investigation report.

The UK Research Integrity Office's recommended [procedure for investigation](#) provides a detailed model that may be helpful to organisations in the UK and elsewhere.

2. Sanctions

If the organisation or BHF determines that the allegation of research misconduct is substantiated, we will consider appropriate sanctions, including:

- letter of reprimand
- removal from the grant in question or withdrawal of current funding
- restriction from future grant applications
- requiring the withdrawal or correction of pending or published abstracts, papers or monographs produced by the research in question
- requiring the monitoring of future work
- repayment of any grant affected plus interest.

Where allegations of research misconduct are upheld, we expect organisations to implement appropriate disciplinary procedures.

If an organisation fails to conduct a timely investigation, or to keep BHF appropriately informed of its actions, we may choose to apply sanctions against the organisation. This may include not accepting new grant applications or, in extreme cases, suspending funding to the organisation.

3. How BHF handles allegations

There may be instances where allegations of research misconduct are made directly to a member of our staff rather than to an individual within the host organisation.

In such instances, having discussed the circumstances with the informant, we will inform an appropriate individual at the host organisation and the organisation will then be responsible for taking suitable action in line with its formal written procedures for handling allegations.

BHF will not form an opinion on any allegation until an investigation has been completed and will only provide information to our staff or external advisors as necessary.

If an informant wishes to remain anonymous, this will be respected unless:

- there are overriding legal requirements that we reveal the identity of the informant
- it is impossible to maintain anonymity to conduct an investigation
- the informant subsequently agrees to relinquish anonymity.

The informant will be notified of any proposed change to their anonymity.

Investigations by BHF

As stated above, it is the host organisation's responsibility to investigate allegations of research misconduct and this is our preferred course of action.

In exceptional cases, we may undertake our own investigation into alleged cases of

research misconduct that concern BHF-funded researchers (for example, where our reputation is at risk or we are dissatisfied with the investigation undertaken by the host organisation).

Any investigations will only be undertaken following consultation with the appropriate representative(s) of the organisation.