

DATED

2014

**Award for Translational
Research**

BETWEEN

(1) BRITISH HEART FOUNDATION

and

(2) [NAME OF ORGANISATION]

THIS AGREEMENT is made the day of 2014

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 details of the Award as granted by BHF and signed by Organisation and BHF, which details shall include the Award Amount, Milestones, Milestone Dates, the Tranches of the Award, costs schedule, Plan and Project Start Date and attached at Schedule 3;
- 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 and attached at Schedule 2 as amended by the Acceptance Letter, if applicable;
- 1.5 "**Award**" means a 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 Acceptance 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 Award Letter;
- 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 Award Amount, Milestones, Milestone Dates, Tranches of the Award, costs schedule and Plan;

- 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;
- 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, 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 Documents containing Know-How, including but not limited to 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 by the relevant Milestone Dates in order for further Tranches of the Award to be released, as described in the Acceptance Letter;
- 1.21 **“Milestone Date”** means a date set out in the Acceptance Letter 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 Acceptance 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 **“Quarter”** means each consecutive three month period commencing on and from either the Project Start Date or a Milestone Period start date;
- 1.35 **“Researchfish”** means an online survey database developed from Medical Research Council’s (MRC) e-Val to gather information about research outputs and outcomes;
- 1.36 **“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;

- 1.37 “**Tranche**” means that part of the Award Amount to be paid in respect of a Milestone Period as set out in the Acceptance Letter.
- 1.38 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).
- 1.39 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.
- 1.40 The Schedules and Recitals form part of this Agreement and any reference to this Agreement shall include the Schedules and Recitals.
- 1.41 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.
- 1.42 The headings in this Agreement are inserted for convenience only and shall not affect the construction of the provision to which they relate.
- 1.43 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.
- 1.44 Any reference to books, records or other information includes books, records or other information in any format or medium including paper, electronically stored data, video or audio recordings and microfilm.
- 1.45 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.
- 1.46 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, or the accuracy of the results 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 Subject to Clause 2.17, 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.

No BHF Liability

- 2.9 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.

- 2.10 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.

Ownership of Equipment and Organisation Obligations

- 2.11 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.

- 2.12 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.

Performance of the Project and Intellectual Property Ownership

- 2.13 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

- 2.14 As at the Effective Date, the costs schedule in the Acceptance 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.
- 2.15 The Award Amount shall be apportioned over the lifetime of the Project and shall be payable by BHF in Tranches. Each Tranche shall be payable in the following manner:

- (a) During the course of a Milestone Period, BHF shall at the end of a Quarter pay actual expenditure incurred by Organisation during that Quarter on presentation of a valid invoice setting out the work or activities carried out in respect of the Project by Organisation during that Quarter in compliance with clause 2.16; and
- (b) The Tranche, or balance of that Tranche taking into account any payment pursuant to clause 2.15(a) above, that is payable on the completion of a Milestone shall be paid to Organisation by BHF:
- (i) On satisfactory completion of the work to be undertaken in respect of that Milestone;
 - (ii) Subject to the submission of the Milestone Report to BHF's reasonable satisfaction; and
 - (iii) Within 30 days of Organisation submitting a request for payment following the satisfactory completion of the Milestone.

save that in respect of the final Milestone, the Tranche or balance of the Tranche owed shall only be paid to Organisation following:

- i. the completion of the Project,
- ii. fulfilment by Organisation of its obligations under this Agreement;
- iii. the delivery of the End of Award Report to BHF's reasonable satisfaction; and
- iv. Submission of a claim for payment or invoice within six months of the final Milestone Date.

2.16 All invoices for payment of the Award Amount, a Tranche or any part thereof shall be submitted in a manner and form reasonably proscribed by BHF.

2.17 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 Acceptance 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.

2.18 BHF will not be obliged to pay any Tranche or balance 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.

2.19 If any Milestone has not been achieved by the date [twelve (12)] months from the corresponding Milestone Date, BHF will not be obliged to pay any Tranche or part thereof which has not been paid prior to that date.

Reporting

2.20 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 requesting payment of the Tranche or balance of the Tranche attributable to that Milestone;

(b) BHF shall either:

- i. confirm to the Organisation in writing, within twenty (20) 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 of the Tranche 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 in respect of any Tranches for Milestones yet to be performed, in which case BHF shall provide Organisation with reasonable details of the grounds on which it has reached this decision.

2.21 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.

2.22 The Organisation shall complete and submit an End of Award Report to BHF on the prescribed form, such report to be presented to BHF before the completion of the Project (or such other date as may be agreed with BHF). BHF will evaluate the End of Award Report and will notify the Organisation within twenty (20) Business Days of receipt whether the report is acceptable to BHF, such approval not to be unreasonably withheld. If the End of Award Report is not acceptable to BHF, it shall notify the Organisation of its reasons at the same time, which may include that the report is incomplete or insufficiently detailed.

Bank Payments

2.23 All payments due to the Organisation under this Agreement shall be made in pounds sterling. The Organisation shall ensure that it holds a bank account in the currency in which the Award Amount shall be advanced. Payment shall be made by electronic wire transfer of immediately available funds directly to the Organisation's account designated below or to any other account which the Organisation may specify by written notice.

Bank Account for the Organisation:

Account Name:	[]
Account No.:	[]
Bank:	[]
Sort code:	[]
SWIFT code:	[]
Branch:	[]
Account Currency:	[]

Contact details

2.24 The contact details of BHF and Organisation are set out below. BHF and Organisation shall

promptly notify the other in writing of any changes to their respective contact details:

BHF:

Name: [NAMES]

Position: [JOB TITLES]

Address: Greater London House, 180 Hampstead Road, London, NW1 7AW.

Phone number: [PHONE NO]

Email: [CONTACT EMAILS]

Organisation:

Name: [NAMES]

Position: [JOB TITLES]

Address: [ADDRESS]

Phone number: [PHONE NO]

Email: [CONTACT EMAILS]

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 Commencement Date, Organisation shall obtain all necessary approvals from its ethics committee.

4 **PROJECT MANAGEMENT, REPORTING PROCESS AND REVIEWING PROGRESS AGAINST MILESTONES**

4.1 Progress against Milestones 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, until notified by BHF of the cut-off date for the submission of this information.

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. 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, 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 research, 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 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 6.2:
- (a) Organisation 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 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. The current standard form revenue and equity sharing agreement for the Award for Translational Research is attached at Schedule 1.
- 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. All consultancies, third party restrictions or arrangements agreed by each and any Relevant Employees shall be notified to BHF by Organisation promptly and in full.

7.10 It is a condition of the Award that no Relevant Employees:

- (a) shall carry out research or supervise research, or act as a consultant or adviser for any commercial organisation without the consent of BHF; and
- (b) where any arrangement is approved by BHF pursuant to clause 7.10(a), no arrangement shall enable a commercial organisation to gain access to unpublished data, findings or conclusions from the Project without BHF’s consent.

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 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.

- 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.

- 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 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 14 days' written notice to the other Party.

24 GOVERNING LAW

- 24.1 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).

SCHEDULE 1: TEMPLATE REVENUE AND EQUITY SHARING AGREEMENT

DATED

2014

**TEMPLATE EQUITY AND REVENUE
SHARING AGREEMENT
(Translational Research Award)**

BETWEEN

(1) [ORGANISATION]

and

(2) BRITISH HEART FOUNDATION

THIS AGREEMENT is made the day of 2014

BETWEEN:

1. **[ORGANISATION]** a **[company]** incorporated in England **[by royal charter]** **[with registered number [NUMBER]]** whose **[registered/administrative]** office is at **[address]** (the “**Organisation**”); and
2. **BRITISH HEART FOUNDATION**, a company registered in England & Wales with company no. 2699547 with registered address at Greater London House, 180 Hampstead Road, London, NW1 7AW, registered charity no. 225971 (England and Wales) and SC039426 (Scotland) (the “**BHF**”).

WHEREAS:

- (A) BHF has approved an Award to the Organisation for translational research to be carried out by **[name of principal investigator]** in connection with **[title of award]** (the “**Translational Award**”), the terms of which are contained in the Funding Agreement and the Acceptance Letter.
- (B) To facilitate management and commercialisation of the technology arising under the Translational Award, the Parties have agreed that the commercialisation of the Intellectual Property arising out of the research undertaken under the Agreement shall be exploited in accordance with the terms of this Agreement.

IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

In this Agreement:

- 1.1 “**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;
- 1.2 “**Acceptance Letter**” means the letter from BHF to the Principal Investigator dated **[date]** specifying the Award Amount, the Milestones, the Milestone Dates, the tranches of the Award, a costs schedule and the Plan and signed by BHF and the Organisation;
- 1.3 “**Control**” means the direct or indirect ownership of more than fifty percent (50%) of the outstanding voting securities of an entity, or the right to receive more than fifty percent (50%) of the profits or earnings of an entity. Any other relationship which in fact results in one entity having a decisive influence over the management, business and affairs of an other entity shall also be deemed to constitute Control;
- 1.4 “**Direct Costs**” means any costs and expenses incurred or allowed from time to time in accordance with this Agreement by or for the account of BHF or the Organisation (as appropriate) in prosecuting, maintaining, enforcing or defending any of the Project Patents, marketing the Project Patents and/or any other Project Intellectual Property and negotiating, concluding or enforcing agreements for the licensing or other exploitation of the same (including by way of acquisition of equity in a company), including without limitation:
 - (a) all reasonable legal, accounting and other professional fees and charges;
 - (b) all costs associated with transferring entitlement to Equity Holdings to transferees;
 - (c) official filing, prosecution, maintenance and renewal fees; and
 - (d) travelling and other out-of-pocket expenditure.

For the avoidance of doubt, Direct Costs excludes any amount allocated in the Award Amount for the payment of such costs and excludes any amount which the Organisation may agree to pay to any person who contributed to the creation of the Project Intellectual Property, and the Organisation shall be responsible for compensating such persons who contributed to the creation of any Project Intellectual Property as are deemed to be members of its Staff at the time of the creation of any relevant Project Intellectual Property in accordance with its own policies and codes of practice.

- 1.5 “**Effective Date**” means the date of execution of this Agreement;
- 1.6 “**Funding Agreement**” means the Award for Translational Research entered into on [date] between the Organisation and BHF in relation to the Award to Organisation;
- 1.7 “**Founders**” means the key scientists responsible for the development of the Project Intellectual Property;
- 1.8 “**Gross Income**” means any cash sums or any other consideration actually received by the Organisation or the Exploiting Party (as the case may be) in respect of the exploitation of Project Intellectual Property, including the assignment or grant of a licence or an option in respect of any Project Intellectual Property, whether by way of royalties, licence fees or otherwise. For the avoidance of doubt, Gross Income shall include consideration received by way of royalties, signature fees, milestone payments, damages from successful enforcement of Project Intellectual Property, and the provision of premises or equipment but shall not include any equity investment or money paid by way of a grant. Where Gross Income is received other than in money the value of the Gross Income shall be determined by reference to the value of the goods, services, licence or other benefit to the Organisation or Exploiting Party (as the case may be);
- 1.9 “**Net Income**” means Gross Income less:
- (a) any Direct Costs; and
 - (b) any applicable taxes on Gross Income and Direct Costs;
- 1.10 “**Parties**” means the parties to this Agreement, or any of them, as the context may require and “**Party**” shall be interpreted accordingly; and
- 1.11 “**Technology Transfer Group**” means a body which is responsible for providing technology transfer services to the Organisation and which has been approved by BHF to carry out exploitation activities with respect to the Project Intellectual Property.
- 1.12 Capitalised terms in this Agreement shall be interpreted in accordance with the definitions as set out in the Funding Agreement or above. Where a capitalised term is defined in both this Agreement and the Funding Agreement, the definition in this Agreement shall apply.
- 1.13 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).
- 1.14 The Schedules and Recitals form part of this Agreement and any reference to this Agreement shall include the Schedules and Recitals.

- 1.15 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; and
 - (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.
- 1.16 The headings in this Agreement are inserted for convenience only and shall not affect the construction of the provision to which they relate.
- 1.17 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.
- 1.18 Any reference to books, records or other information includes books, records or other information in any format or medium including paper, electronically stored data, video or audio recordings and microfilm.
- 1.19 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.
- 1.20 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.

2 REVENUE SHARING ARRANGEMENTS

- 2.1 Subject to the provisions of this Clause 2, BHF and the Organisation shall share Net Income and Equity Holdings received in respect of exploitation of the Project Intellectual Property and Background Intellectual Property (if any) in the proportions to be agreed:
- (a) the Organisation [fifty percent (50%)]; and
 - (b) BHF [fifty percent (50%)].
- 2.2 Where any Net Income or Equity Holding is received by the Exploiting Party as part of the consideration for the grant of rights which includes rights other than those arising under the Project Intellectual Property and/or Background Intellectual Property, then the consideration shall be apportioned by the Exploiting Party between, on the one hand, the Project Intellectual Property and/or Background Intellectual Property, and on the other hand, any other rights granted, in such manner as is fair and reasonable. If Net Income includes consideration other than cash the Party receiving the consideration shall pay to the other

Party an amount in cash as required to satisfy the other party's share calculated in accordance with Clause 2.1.

- 2.3 For the avoidance of doubt, the Organisation shall be responsible for rewarding its employees and the Founders out of its percentage share of the Net Income or Equity Holdings in accordance with its own policies. In the event that the Exploiting Party is the Organisation, Net Income or Equity Holdings received by the Organisation shall be shared with BHF prior to any deduction of such a reward. Such reward (if any) shall not affect the amount of Net Income or Equity Holdings due to BHF.

3 TRANSFER OF EQUITY HOLDINGS

- 3.1 The Exploiting Party shall use its reasonable endeavours to ensure that the Equity Holding is issued on terms whereby it is transferable to each of the Parties (the “**Transferees**”) or, if more appropriate, that the relevant proportion of the Equity Holding due to each Transferee is issued direct to them.
- 3.2 Where the Exploiting Party is issued the Equity Holding on behalf of itself and the other Transferees, it shall hold such proportion as nominee for the other Transferees and shall take all necessary steps reasonably within its power and at its expense, including executing stock transfer forms, to transfer the relevant proportions of the Equity Holding to them in so far as it is able to do so (and without incurring any liability for so doing) as soon as reasonably practicable. The other Transferees shall do all such things as may be necessary or desirable to assist the Exploiting Party to transfer the relevant proportion of the Equity Holding to them including signing any ancillary shareholders’ agreement or other relevant document as is required to effect the transfer.

4 REIMBURSEMENT OF COSTS

- 4.1 Where Direct Costs incurred/allowed in a given accounting year exceed the Gross Income from exploitation of Project Intellectual Property and Background Intellectual Property (if any) for that year, then such excess costs shall be carried forward and offset against future Gross Income on such exploitation until such time as they have been fully recovered.
- 4.2 For the avoidance of doubt, the Organisation shall be liable to BHF for any share of costs incurred by BHF that is attributable to a transfer of the Organisation’s shareholding to any of the Founders or other Organisation Staff.

5 ACCOUNTING STATEMENTS AND PAYMENTS

- 5.1 Annually on or about [date] each year, the Exploiting Party shall prepare and send an accounting statement to the other party for the previous year ending on [date]. Such statement shall set out Gross Income and Net Income received, and deductible Direct Costs and taxes on the Project Intellectual Property and Background Intellectual Property. The Exploiting Party shall send with the statement such payment in sterling as is required to the Non-Exploiting Party.
- 5.2 Where any revenue and expenditure in respect of Project Intellectual Property and/or Background Intellectual Property is received or made in a currency other than sterling, the sterling equivalent of the sum shall be:

- (a) where such sum has been converted into sterling prior to preparation of the statements provided pursuant to Clause 5.1, the actual sterling sum on conversion; or
 - (b) where such conversion has not taken place prior to preparation of the statements provided pursuant to Clause 5.1, calculated using the average of the buying and selling rates quoted by HSBC Bank plc at the date the sum is received or paid by the Exploiting Party as applicable, or at such other date as such Party may reasonably specify having regard to the circumstances.
- 5.3 All payments due hereunder are exclusive of value added tax which shall, where applicable, be payable in addition, subject to receipt of a proper VAT invoice.
- 5.4 All payments due hereunder shall be made after deduction of any applicable income taxes or other withholding taxes required by law, and the paying party shall in respect of any such deduction furnish to the receiving party any certificate or other documentary evidence reasonably available to it in order to enable the receiving party to obtain any applicable relief from any double taxation on such payment.
- 5.5 The Exploiting Party shall keep such records as are reasonably necessary to enable a proper assessment to be made of the sums payable under this Clause 5 and the Direct Costs for at least six (6) years after the date in which such Direct Costs were incurred or Net Income received. The Exploiting Party shall allow an independent accountant duly authorised on behalf of and at the expense of the Non-Exploiting Party to inspect those records to the extent that they relate to those sums at all reasonable times by prior written appointment, such appointment to be reasonably agreed and such assessment to be limited in frequency to not more than once in any year. Such accountant shall not disclose to any third party or use for any unauthorised purpose any information not relevant to the verification of the sums due to the Non-Exploiting Party as is obtained as a result of any such inspection.

6 DURATION AND TERMINATION

- 6.1 This Agreement shall commence on the Effective Date and shall continue for whichever is the longer of:
- (a) the last to expire of the Project Patents;
 - (b) the expiry of any agreement entered into for the exploitation of the Project Intellectual Property or the Background Intellectual Property; or
 - (c) the expiry of any payment obligation relating to the exploitation of the Project Intellectual Property or the Background Intellectual Property.

7 GENERAL

- 7.1 If the Exploiting Party is the Organisation, the Organisation shall be responsible for ensuring that its Technology Transfer Group complies with this Agreement.
- 7.2 This Agreement is in addition to the Funding Agreement and the Award Letter (as may be amended from time to time), which will continue to apply. Should there be any conflict between this Agreement, the Award Letter and the Funding Agreement, then this Agreement shall prevail.
- 7.3 Nothing in this Agreement shall give rise to any partnership or the relationship of principal and agent between BHF and either of the Organisation or its Technology Transfer Group.

- 7.4 All notices and communications shall be in writing and addressed to the Parties at the relevant address stated at the beginning of this Agreement (or such other address as may be notified from time to time).
- 7.5 None of the rights or obligations under this Agreement may be assigned or transferred without the prior written consent of the other Parties. This Agreement shall be binding on and enure for the benefit of the successors in title of the Parties.
- 7.6 No waiver of any breach or default under this Agreement or any of the terms herein shall be effective unless such waiver is in writing and has been signed by the Parties. No waiver of any such breach or default shall constitute a waiver of any other or subsequent breach or default.
- 7.7 If any provisions of this Agreement are held to be invalid, illegal or unenforceable (in whole or in part) such provisions or parts shall to that extent be deemed not to form part of this Agreement but the remainder of this Agreement shall continue in full force and effect.
- 7.8 Each party shall do and execute or arrange for the doing or executing of all acts, documents and things as may be necessary in order to implement this Agreement.
- 7.9 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.

IN WITNESS whereof the Parties or their duly authorised representatives have executed this Agreement on the date hereinbefore written.

**[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 2: APPLICATION

[TO BE INSERTED]

SCHEDULE 3: ACCEPTANCE LETTER

[TO BE 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: