

Terms and Conditions

DEBRA International Research Grants

Definitions

Award Letter	shall mean the letter sent by DEBRA to the Recipient and the Grantholder which specifies the amount awarded, the final Research Project and the duration of the Grant, and which incorporates these Terms and Conditions.
DEBRA	means either DEBRA International, DEBRA UK, DEBRA Austria, or another DEBRA, as specified in the Award Letter.
EB Field	means treatment, prevention or diagnosis of Epidermolysis Bullosa (EB).
Grant	means the Grant awarded to the Recipient and the Grantholder in order to carry out the Research Project.
Grantholder	means the Principal Investigator (PI) to whom the Award Letter is addressed.
Recipient	means the university, hospital, research institution or company which is the Grantholder's employer.
Research Project	means the research project proposed in the grant application as amended by any revisions suggested or required by DEBRA (or its reviewers) which are agreed by the Grantholder. Acceptance of the Grant implies agreement by the Grantholder to implement requirements contained in these Terms and Conditions and any supplementary provisions in the Award Letter.
Results	shall mean the results of the Research Project and any intellectual property, whether registerable or not, including clinically relevant know-how, subsisting in such results.

The Recipient and Grantholder will use the Grant in accordance with the following terms:

1. GRANT ADMINISTRATION

- i. The Recipient and the Grantholder shall use the Grant for the purpose stated in the Research Project and according to the budget in the Award Letter.
- ii. The Research Project may be amended only by the written agreement of DEBRA, the Recipient and the Grantholder.
- iii. Any proposed virement of funds greater than 10% of the total Grant value between budget headings must be approved in writing by DEBRA.
- iv. The Recipient acknowledges that DEBRA will not fund any overheads, administrative costs, salaries of the Grantholder or attendance at conferences or meeting (unless reporting Results at such meeting). DEBRA will fund actual costs of open-access publication of Results, up to one year after completion of the grant, subject to a maximum of €5000 in total. The Recipient will ensure that sufficient resources are dedicated to support the Research Project.

- v. Payment for all expenditure under the Grant shall be made quarterly in arrears and against a valid invoice. Recipient shall submit invoices in accordance with the instructions given in the Award Letter. The Recipient shall not include on any such invoice any finance or service charges imposed in respect of this arrangement. No reimbursements will be made for invoices submitted more than one year after the end of the grant period.
- vi. If costs incurred by the Recipient, in carrying out the Research Project, amount to less than the maximum amount of the Grant initially approved, DEBRA shall be obliged to pay only such amount as may be necessary to discharge the actual costs, and if the costs incurred by the Recipient exceed the amount of the maximum Grant approved, such excess shall be borne by the Recipient. Reasonable bank transaction fees and charges related solely to currency exchange in paying invoices shall be borne by DEBRA.
- vii. Any part of the Grant that remains unused or uncommitted at the end of the Research Project, or its earlier termination, or is subsequently found to have been incorrectly attributed to the Research Project, shall be returned by the Recipient to DEBRA, unless DEBRA has agreed otherwise in writing.
- viii. Unless stated otherwise in the Award Letter, all equipment purchased using the Grant shall belong to the Recipient unless the Grantholder leaves the Recipient's employment during the Grant, in which case DEBRA shall decide to whom such equipment shall belong.

2. PERSONAL DATA PROTECTION & PROCESSING

- ix. The protection of your personal data is of the highest priority in our work. We fulfil the current European General Data Protection Regulation 2018 and (because DEBRA International is a charity registered in Austria) also the Austrian *Datenschutzgesetz* and *the Telekommunikationsgesetz* (DSG 2018 and TKG 2003), applicable since 25th of May 2018.
- x. In this section we provide you with information about why and how we collect your data, which kinds of data are collected and how we use your personal data. Finally, we inform you about data security applied while processing your data and about your right to erase your own data.
- xi. By registering on our research-grant management system via CC Grant Tracker you will be asked to give following personal data and give consent to us for its use: Title, First Name, Middle name, Last name, Position, Department, Institution, Address, Telephone number, Email as well as other personal data included in your application and CV details
- xii. Security of your personal data transmission and processing is provided via Grant Tracker System. Data security is provided by the use of Secure HTTP (https in the URL you visit to access DEBRA's Grant Tracker), this is backed up by CC Technology being ISO 27001 Certified and CC Grant Tracker Data Centre Partner being Certified.
- xiii. These data need to be stored and processed for us to be able to process your grant application and further your approved grant.
- xiv. Your research-grant application, including your personal data, will be forwarded to members of DEBRA International's MSAP (Medical and Scientific Advisory Panel) as well as other expert reviewers. They will use your data for the purpose of reviewing and assessing your research-grant application only. The Terms of Reference for MSAP explicitly require MSAP members to treat all content of research-grant applications as confidential. Same is applicable for external Reviewers.

- xv. Whether or not your research-grant application is successful, we retain your data to have a clear history of all applications, and to facilitate assessment of your possible future applications, including any resubmitted applications. Should your application for research funding be successful, we will also use your personal data for correspondence with you in relation to both research progress and financial management of your DEBRA grant, including where relevant, third-party payment processors, and external partners contracted to assist us with IP management, contracting and licensing.
- xvi. We may also use your personal data in communicating with other offices and individuals at your institution (for example, your finance or grant-management offices, or technology transfer services), but only to the extent necessary for us to manage your grant and its outputs.
- xvii. We may also use your personal data for communication with you about DEBRA events, initiatives, funding opportunities, working groups, or to invite you to meetings or to speak or otherwise participate in DEBRA-associated conferences, or to respond to any requests or queries you send to us.
- xviii. For the majority of the time, we will not share your data with any other organisations. However, on occasions where we either run a joint event with another organization, or where we enlist the services of event organizers or other service providers, we may share information such as your name, email address, the organisations you work for and any special dietary or accessibility requirements: your data will be shared only for that event, and only to the extent required.
- xix. We may also share your information:
 - i. to comply with legal or regulatory requirements and to respond to lawful requests, court orders and legal process.
 - ii. to enforce our rights, prevent fraud and for safety: to protect and defend the rights, property, or safety of us or third parties, including enforcing contracts or policies, or in connection with investigating and preventing fraud.
- xx. You have the right to withdraw your consent to our holding your data by informing us and we will delete all your personal data promptly. You also have the right to amend your data (either to update or correct inaccuracies), or to remove particular items of data, though you should bear in mind that some data is essential to our management of a grant or other communications with you.

3. EMPLOYMENT

- i. DEBRA is not an employer with respect to the Grant. Where the Grant provides for employment of staff on the Research Project, the Recipient undertakes to ensure a contract of employment to such staff that is compliant with the relevant laws.
- ii. The Recipient is responsible for all employment costs, including but not limited to special inventor's remuneration, salary increments as a result of pay awards subsequent to award of the Grant, and any maternity, sickness and redundancy payments awarded by the Recipient to staff employed on the Research Project.
- iii. In the event that the Grantholder leaves the employment of the Recipient, the Recipient, the Grantholder and DEBRA shall discuss in good faith whether the Research Project can continue at the Recipient under the supervision of another researcher, or whether the Grantholder wishes to take the Grant to his/her next employer. DEBRA shall have the right to withdraw the Grant if it is not satisfied that the Grantholder and Recipient's proposal will ensure that the Research Project is completed in a satisfactory manner.

4. RESEARCH PRACTICE

- i. The Recipient shall ensure that the Research Project is carried out in accordance with relevant laws and regulations.
 - a. In particular, research using protected animals must be carried out under the appropriate licences and certificates and any other relevant national regulations in the country/ies where the research will be carried out. DEBRA will only support the use of protected animals where no valid alternative exists, and the applicant must have regard to animal welfare and advances in the refinement, replacement and reduction of animal uses.
 - b. The Recipient shall ensure that the Grantholder and any other investigators involved in clinical trials are authorised health professionals in accordance with the applicable laws and regulations. The Recipient acknowledges that DEBRA shall not take on any liabilities relating to any clinical trial or study.
 - c. The Recipient must ensure that appropriate ethical approval, applicable in the country/ies where the research is carried out, is obtained, for the research funded by the Grant and must accept full responsibility for ensuring that any such ethical approval is in place at all relevant times during the Grant.
- ii. Where the Research Project involves collaboration with other institutions as stated in the research proposal or otherwise agreed with DEBRA, the Grantholder and Recipient undertake to ensure that the subcontracted institutions adhere to the same standards of research practice.
- iii. The Recipient is responsible for ensuring that subcontracted work is completed satisfactorily and expenditure accurately attributed and auditable.

5. REPORTING AND PUBLICITY

- i. The Recipient and Grantholder shall report to DEBRA, in accordance with the instructions on the Award Letter, as follows:
 - a) The Recipient and Grantholder shall submit annual reports which shall be due within one (1) calendar month of each anniversary of the start date of the Research Project and within three (3) calendar months of the end date. All reports must include the information outlined on the Reporting Requirements document provided with the Award Letter, or such document as amended during the period of the Research Project.
 - b) During and after the end of the Grant, the Recipient (through its technology transfer office or similar) and Grantholder shall notify DEBRA within fifteen (15) days of the occurrence of the following:
 1. publication of a paper or abstract which includes Results, (and an electronic copy of the publication), however in a way that does not obstruct or prejudice any patent filings, if any;
 2. the generation of any invention, or other results which may be suitable for commercialisation, arising in whole or in part from the Research Project (and a summary of such invention or results);

3. filing of a patent application based on such an invention (and a copy of the application);
 4. the Recipient intends to drop such a patent or patent application;
 5. an agreement with a third party (whether commercial or not-for-profit) is concluded concerning or relating to the Results.
- ii. In the event that the Grant is composed, in part or in whole, of monies donated to DEBRA from a third party, such third party may have specific reporting requirements. Any additional reporting requirements of this third party shall, where known at the time of award, be stated in the Award Letter but otherwise shall be notified to the Recipient and Grantholder after the start date. DEBRA shall ensure that such reporting requirements shall not be onerous. The Recipient and Grantholder shall comply with third party reporting requirements included in the Award Letter and shall use reasonable endeavours to comply with any changes in reporting requirements notified after issue of the Award Letter.
 - iii. DEBRA may withhold any funds not yet paid to the Recipient under the Grant if the Recipient and Grantholder fail to report in accordance with this section 4 and in detail that is to DEBRA's satisfaction, or fail to demonstrate in the reports scientific progress that is to DEBRA's reasonable satisfaction. No payment of Grant owing will be made until any outstanding report has been received and accepted by DEBRA and any shortfall in progress has been rectified. DEBRA may withhold the greater of 10%, or 3 months of the Award, until a satisfactory final report and accounts are provided.
 - iv. The Grantholder and Recipient acknowledge that reports will be circulated to members of the DEBRA International Medical and Scientific Advisory Panel or other Expert Advisory Panel used to review this Grant. If there is any reason, e.g. conflict of interest, why this should not occur with an individual report, the Grantholder and/or Recipient should inform DEBRA at the time of report submission. The lay summary may be circulated to other grant holders and national DEBRAs or other Epidermolysis Bullosa support groups, and may be used in publicity such as being placed on DEBRA websites.
 - v. It is DEBRA's policy to publicise as widely as possible its Grants and the scientific progress achieved through them, and encourages publication in open-access journals, whilst also taking into account any consideration for protecting intellectual property. In accepting the Grant the Grantholder and Recipient agree to co-operate in such publicity efforts. DEBRA requires the findings of the research it funds in full or in part to be published promptly, but with due regard to protecting the intellectual property of research outputs.
 - vi. The support of DEBRA must be acknowledged in all publications or other public output arising from the work funded, whether written or oral (e.g. scientific or popular publications, press releases, conferences, seminars, etc.). The Recipient and Grantholder must acknowledge DEBRA explicitly as the sponsor or co-sponsor of the research using the following phrase "supported by DEBRA International – funded by DEBRA Austria" or "supported by DEBRA International – funded by DEBRA UK" or other as indicated on the Award Letter. The Recipient and/or Grantholder shall submit a copy of any journal article or abstract in accordance with this section 4.

6. AUDIT

- i. The Recipient will maintain accurate, detailed and complete records of all expenditure with respect to the Grant. These records should be subject to the same formal audit arrangements as exist in the Recipient, and which include procedures for anti-fraud and corruption control.
- ii. DEBRA has the right to request from the Recipient, at any time, any financial information relating to the Grant, and confirmation that the Recipient's Auditors have raised no concerns with respect to accounts for the Grant.
- iii. DEBRA reserves the right to undertake a formal audit and review at DEBRA's expense, of the Research Project, if reports fail to demonstrate scientific progress to DEBRA's reasonable satisfaction, or if DEBRA or its Auditors request clarification or detail of Research Project expenditure invoiced.
- iv. The Grantholder and Recipient agree to cooperate with DEBRA by provision of any reasonable information requested.

7. CONFLICT OF INTEREST

- i. The Grantholder and Recipient must inform DEBRA if any conflicts of interest arise that have the potential to impact upon the direction or outcomes of the Research Project, or their possible exploitation.

8. INTELLECTUAL PROPERTY AND COMMERCIAL EXPLOITATION

- i. DEBRA requires the Recipient to have in place, and implement, processes for the identification, protection, management and exploitation of intellectual property (IP) derived from the Research Project.
- ii. The Recipient shall ensure that all personnel (including employees, students, and subcontractors) working on the Research Project have signed a contract with the Recipient under which any IP developed under the Grant is automatically assigned to the Recipient.
- iii. The Recipient and the Grantholder shall notify DEBRA of any new invention or any other Result arising from the Research Project and of any patent filed on such invention in accordance with section 4 above.
- iv. Should the Recipient not protect, manage or exploit any IP arising from the Grant, to the reasonable satisfaction of DEBRA, then DEBRA or its appointed agents shall have the right but not a duty to manage protect or exploit IP, six months after giving the Recipient notice in writing that the Recipient is failing to do so. DEBRA may exercise this right if it reasonably considers opportunity to benefit its membership might be lost if more rapid action is not taken. The Recipient and Grantholder agree to act as required to assist DEBRA or its agents to achieve this.
- v. The Recipient agrees to use reasonable endeavours to exploit the Results for the benefit of Epidermolysis Bullosa patients, and to ensure that any licensee in the EB Field develops the relevant Results in the EB Field. In addition, DEBRA explicitly wishes to prevent the blocking of development of Results in the EB Field. To achieve this the following restrictions apply, as appropriate:

- a. In the event that the Recipient desires to grant to a third party a commercial licence to any of the Results in the EB Field, but in no other field, it may do so on a non-exclusive basis without the prior consent of DEBRA, or on an exclusive basis only with the prior consent of DEBRA. Such consent shall however not be unreasonably withheld.
 - b. In the event that the Recipient desires to grant to a third party a commercial licence to any of the Results in a field that excludes the EB Field, it may do so without the prior consent of DEBRA.
 - c. In the event that the Recipient desires to grant to a third party a commercial licence to any of the Results in a field broader than the EB Field (but including the EB Field) it may do so on a non-exclusive basis, without the prior consent of DEBRA; alternatively, the Recipient may licence Results in the EB Field non-exclusively along with other fields exclusively, without the prior consent of DEBRA.
 - d. In no event may the Recipient assign the Results to a third party without the consent of DEBRA.
 - e. In the event that Recipient is to enter into a license agreement with a commercial third party, in relation to the Results and in the EB Field, the Recipient shall use reasonable endeavours that such license does not have the effect of unreasonably restricting the academic freedom of the Grantholder, taking all the circumstances into account.
- vi. The Recipient shall notify DEBRA of any licence concluded under which rights to any Results are granted. If, two years after an invention is notified to DEBRA, the Recipient has not exploited the invention in the EB Field, DEBRA shall have the right to request assignment or licence (at DEBRA's discretion) of such invention and the Recipient shall, subject to third party rights, do all things necessary to effect such assignment or licence. DEBRA shall have the right to develop and exploit such invention thereafter. Recipient shall introduce DEBRA's assignment or licence rights in any licenses concluded with third parties in order to effectuate such an assignment or licence to DEBRA.
 - vii. The Recipient shall not grant to a third party any rights to any Results without first entering into a Revenue Sharing Agreement with DEBRA, under which the Recipient gives to DEBRA a reasonable proportion of any financial benefit received by the Recipient or its affiliates arising from exploitation of the Results.
 - viii. DEBRA awards are subject to Revenue Sharing Agreements, the terms of which are specific to the national DEBRA making the Award. The Revenue Sharing Agreement specific to this Award is provided in Appendix 1 and forms a part of these Terms and Conditions.

9. LIABILITY LIMITATION

- i. In no event shall DEBRA be responsible for any liability, financial or otherwise, arising directly or indirectly out of any act or omission of the Recipient, the Grantholder or any other researcher working on the Research Project including, but not limited to, the research conducted under the Grant, the expenditure of the Grant funds, the conduct of the Grantholder and other researchers and the use of the Results.

- ii. The Recipient agrees, during and after the terms of the Grant, to indemnify and keep indemnified DEBRA from and against any and all liability, loss, damage, cost or expenses which may result from the Recipient's, or any of its employees' or licensees', conduct in connection with the Grant except where such liability, loss, damage, cost or expenses are the result of the gross negligence by DEBRA.

10. VARIATION OF TERMS

- i. In the extreme cases of contemporaneous research developments negating the meaningful conclusion of the Research Project, or where DEBRA's financial position is such that funding of the Grant cannot be continued for the full term, DEBRA reserves the right to discontinue the Grant by giving three (3) months' notice of the intention to do so. In such circumstances the Recipient and Grantholder shall, from the date that DEBRA notifies them of the decision to terminate the Grant (the "Notification Date"), minimise all expenditure on the Grant. DEBRA shall, where it is able, reimburse the Recipient for all expenditure committed before the Notification Date which is not cancellable.
- ii. The Grantholder or Recipient, as appropriate, must inform DEBRA as soon as practicable of anything which might delay the start date or completion date of the Research Project, or which might cause divergence from the aims, directions or anticipated outcomes of activities funded by the Grant, or affect the Grantholder's or Recipient's ability to comply with these Terms and Conditions of the Grant.
- iii. DEBRA reserves the right to amend these Terms and Conditions from time to time. If, for any reason during the lifetime of the Grant, such an amendment is made, DEBRA reserves the right to apply the new version of the Terms and Conditions in place of those which were applied at the time of the original award by notification to the Recipient and Grantholder.
- iv. In the event that the provisions of the Award Letter conflict with the provisions of these Terms and Conditions, the Award Letter shall prevail.
- v. The contract between DEBRA, the Recipient and the Grantholder created by the Award Letter, the signed acceptance form (which form part of the Award Letter) and these Terms and Conditions shall continue for the term of the Grant. Any provisions in these Terms and Conditions which are expressed to continue after the term of said contract shall do so.

11. GOVERNING LAW, JURISDICTION AND COMPLIANCE

- i. These Grant Terms and Conditions shall be governed by and construed in accordance with English Law, and subject to the jurisdiction of the English Courts.
- ii. The Recipient and Grantholder must ensure that the activities funded by the Grant are at all times conducted in accordance with all applicable laws and regulations.



Appendix 1

Revenue Sharing Agreement (template)

This Revenue Sharing Agreement (the "Agreement") is entered into by and between:

- (1) **DEBRA Austria** ("the Charity"). Am Heumarkt 27/1, 1030 Wien, Austria.
- (2) **XXXXX** ("the Institution"), **XXXXXX**.

The undersigned hereinafter each individually referred to as: "Party" and collectively as: "Parties".

PREAMBLE:

- (A) **XXXX**.
- (B) The Research Project contributed towards the generation of certain Intellectual Property; see **Schedule 1**.
- (C) The Parties agree that the Institution should lead on the protection and commercialisation of the Intellectual Property but that the Institution shall share with the Charity a percentage of any revenue derived from such process in acknowledgement of the Charity's contribution, in a manner consistent with the Terms and Conditions of the Grant.
- (D) The Parties wish to formalise and clarify this arrangement on the terms below.

The Parties hereby agree as follows:

1. Definitions

- 1.1 In this Agreement the following words and phrases shall have the following meanings unless the context requires otherwise:

"Business Day" shall mean a day other than a day which is a Saturday, Sunday or public or bank holiday in [City, Country of Grantholder] or Vienna, Austria.

"Combination Package" shall mean a package containing the Intellectual Property bundled together with any other intellectual property that the Institution owns or is the beneficial owner (or otherwise has access to); *OR*, Intellectual Property containing intellectual/inventive contribution arising from a DEBRA funded Project and intellectual/inventive contribution arising from a project with a different source of project funding

"Combination Package Gross Revenue" shall mean all consideration received by Organisation from the commercial exploitation of the Intellectual Property in a Combination Package including licence fees, option fees, up-front fees, royalties,

minimum royalties or milestone payments, sub-licence initiation fees, or any other fixed sum payments received by the Organisation from the licensing or other disposition of the Intellectual Property in a Combination Package.

“Combination Package Net Revenue” shall mean Combination Package Gross Revenue multiplied by the WR, less Direct Costs and any taxes including, but not limited to, value added tax, sales, excise and withholding tax, imposed on Institution in connection with Gross Revenue which Institution is unable to offset or recover.

“Commencement Date” shall mean the date on which both Parties have signed (and had witnessed) this Agreement.

“Direct Costs” shall mean all external expenses incurred and paid by the Organisation in connection with the filing, prosecution and maintenance of the Intellectual Property including, but not limited to, official filing fees, agent costs, and reasonable legal and other advisory and consultancy fees. To avoid doubt, Direct Costs shall not include the Organisation’s internal costs relating to these activities, regardless of the legal constitution of the Institution’s technology transfer office. The Organisation may however retain a Technology Transfer Fee (calculated from Net Revenue). For the avoidance of doubt, the Organisation may not make deductions for salary or taxes in respect of the Organisation or the inventors or generators on the Intellectual Property.

“Grant” means the award made by the Charity to the Institution for the Grantholder to undertake the Research Project.

“Gross Revenue” shall mean all consideration received by Organisation from the commercial exploitation of the Intellectual Property pursuant to this Agreement, including licence fees, option fees, up-front fees, royalties, minimum royalties or milestone payments, sub-licence initiation fees or any other fixed sum payments received by the Institution from the licensing or other disposition of the Intellectual Property in forms including but not limited to monies, shares or options.

“Intellectual Property” or “IP” shall mean Materials, Patent Rights, Know-How, trademarks, service marks, registered designs, copyrights, database rights, design rights, confidential information (all generated or validated in the course of the Research Project), applications for any of the above, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above.

“Know-How” shall mean unpatented technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain.

“Materials” shall mean the biological or biochemical matter generated in the course of the Research Project (whether living or not), for example (without limiting the foregoing), viruses, cell lines, plasmids, new varieties or genetically modified organisms, such as mice or bacteria.

“LifeArc” means a not-for-profit company registered in England under number 2698321 and limited by guarantee (registered charity 1015243), whose registered office is at 7th floor, Lynton House, 7-12 Tavistock Square, London WC1H 9LT (Company registration number 2698321).

“Net Revenue” shall mean Gross Revenue less Direct Costs and any taxes including but not limited to value added tax, sales, excise and withholding tax, imposed on the Organisation in connection with Gross Revenue that the Institution is unable to offset or recover.

“Organisation” shall mean the Institution together with the TTO.

“Patent Rights” shall mean (a) any national, regional or international patent application or patent, including any provisional patent application, (b) any patent application filed either from such a patent, patent application or provisional application or from an application claiming priority from any of these, including any divisional, continuation, continuation-in-part, provisional, converted provisional, and continued prosecution application, (c) any patent that grants from any of the foregoing patent applications ((a) and (b)), including any utility model, petty patent, design patent and certificate of invention, (d) any extension or restoration by existing or future extension or restoration mechanisms, including any revalidation, reissue, re-examination and extension (including any supplementary protection certificate and the like) of any of the foregoing patents or patent applications ((a), (b) and (c)), and (e) any similar rights, including so-called pipeline protection, or any importation, revalidation, confirmation or introduction patent or registration patent or patent of additions to any such foregoing patent application or patent.

“Research Project” shall mean the project which received funding from the Charity.

“Technology Transfer Fee” shall mean the sum retained by the Organisation, calculated as 30% of each €1 of Net Revenue up to the first €100,000 of Net Revenue, plus 25% of each €1 of Net Revenue between €100,001 and €500,000 of Net Revenue plus 20% of each €1 of Net Revenue over €500,000.

“TTO” shall mean Technology Transfer Office (or equivalent body or person).

“Weighting Ratio” or “WR” shall mean the reasonable inventive relative weighting given by Institution in good faith to each technology/intellectual property included in the Combination Package as a contribution to the whole. See also guidance note in **Schedule 2**.

2. Intellectual Property ownership

- 2.1 The Institution is responsible for ensuring that the Institution inventors or generators or authors of the Intellectual Property, who they control, assign their rights in the Intellectual Property to the Institution, in order to enable the Institution to properly exploit the Intellectual Property.
- 2.2 Subject to Clause 4.9, the Institution is responsible for ensuring that the Institution has all the necessary rights to comply with this Agreement and subject to third party rights, and is able to distribute the Materials (if any) for commercial and non-commercial purposes.
- 2.3 The Institution hereby grants to the Charity a non-exclusive, sub-licensable (through multiple tiers) license to use the Intellectual Property solely in academic or not-for-profit research.
- 2.4 For clarity, the Institution may transfer or assign or license the Intellectual Property to a technology transfer company for the purpose of distributing or commercialising this Intellectual Property. However, such transfer of rights must not be to the detriment of the Charity's rights or the terms and conditions of the Grant.

3. Intellectual Property and expenses

- 3.1 The Parties agree that the Institution shall have sole responsibility and authority to manage and execute the duties required for the filing, prosecution and maintenance of the Intellectual Property, including the Patent Rights. The Institution shall keep or shall procure that their agents keep all notices, applications and correspondence filed in connection with the Intellectual Property, and shall provide copies of such documents to the Charity or their agent on reasonable request.
- 3.2 Direct Costs shall be paid by the Institution and will then be deducted from Gross Revenue and/or Combination Package Gross Revenue.
- 3.3 If, at any time, the Institution decides to abandon in any territory any or all patent applications or patents included in the Patent Rights ("Patent Rights for Abandonment"), the Institution shall notify the Charity of its intention at least sixty (60) days prior to the date any Patent Office action concerning the Patent Rights for Abandonment is due and shall offer to assign the Patent Rights for Abandonment to the Charity. If the Charity wishes to receive assignment of the Patent Rights for Abandonment, the Charity will be responsible for all further costs arising from the Patent Rights for Abandonment and the Parties will negotiate a separate assignment and revenue sharing agreement that specifies the rights each Party shall have in relation to the Patent Rights for Abandonment and any related data or information.
- 3.4 In the event the Intellectual Property rights are infringed by a third party, the Institution shall have the sole right to defend the Intellectual Property rights and shall do so at its own cost but shall not be obliged to do so. However, the Institution shall not issue a claim or threaten to issue a claim against a charitable or not-for-profit organisation without the express approval of the Charity.

4. Exploitation

- 4.1 Subject to Clause 2.4, prior to granting any rights under the Intellectual Property to any third party, the Institution shall provide to the Charity or its agent on a confidential basis in such reasonable detail as may be requested details of the proposals for the exploitation of the Intellectual Property including where applicable the identity of any proposed licensee or assignee of the Intellectual Property and the intended terms under which such rights will be granted.
- 4.2 The Institution shall take into account in its negotiations with any such third party any representations made by the Charity or its agent bearing in mind the legitimate interest of the Charity in such negotiations as a potential Institution of a share of Net Revenue or of Combination Package Net Revenue.
- 4.3 Subject to the obligations in Clauses 4.1, 4.2 and 4.5, the Institution will have the sole responsibility to exploit the Intellectual Property commercially in any manner it decides including, but not limited to, licensing, selling and assigning in exchange for consideration. The decision whether or not to conclude any agreement in relation to such commercial exploitation shall be matters for the sole discretion of the Institution. Any agreement made by the Institution in relation to exploitation of the Intellectual Property shall adequately also reflect the obligations imposed by the Grant Terms and Conditions, and any supplementary provisions in the Award Letter.
- 4.4 The Institution shall provide the Charity or its agent on a confidential basis with copies of all agreements related to the Intellectual Property. For clarity, and without limiting the foregoing, this shall include administration agreements, assignments, licenses, and sublicenses granted under the Intellectual Property.
- 4.5 If the Institution elects not to exploit the Intellectual Property commercially it will notify the Charity (within a reasonable period of time) and the Charity will inform the Institution of whether it, or a third party acting as the Charity's agent, wishes to be

granted the right of exploitation, and if so, the Parties will meet to agree upon the best way to proceed, and in accordance with the terms and conditions of the Grant.

- 4.6 Subject to third party rights, the Institution agrees to make freely available the Materials and associated Know-How for academic or not-for-profit research, to the maximum extent possible. To that end, the Institution may deposit the Materials in an appropriate repository, for subsequent onward distribution.
- 4.7 The Institution agrees to use the Intellectual Property in a lawful manner according to applicable law and any associated guidelines and guidance. In relation to Materials, the Institution agrees to act (and shall require that any assignee or licensee acts) with the utmost care in terms of human and animal health, wellbeing and ethics.
- 4.8 Where the Intellectual Property is to be licensed or assigned as part of a Combination package, the Institution shall determine an appropriate and reasonable WR, in accordance with the custom and practice of reasonable technology transfer offices. The Institution shall consult with the Charity or its agent in making a determination of an appropriate WR.
- 4.9 The Parties recognise that in the case of jointly generated Intellectual Property (i.e. the Institution and a third party organisation), the Institution may not be the party leading on the exploitation of the Intellectual Property. In such a situation, the Institution may assign or license its rights in the Intellectual Property to the joint owning organisation (in exchange for an appropriate and equitable revenue share). The Institution shall notify the Charity of such circumstances. Moreover, the provisions on revenue sharing in Clause 5 shall apply only to the consideration actually received by the Institution. Moreover, the Institution shall ensure that any agreement with a joint owning third party in respect of the Intellectual Property does not prejudice the rights of the Charity in any way.

5. Revenue sharing

- 5.1 The Parties shall share all Net Revenue received from the exploitation of the Intellectual Property (**Schedule 1**), in the proportion of fifty percent (50%) to the Organisation and fifty percent (50%) to the Charity. Note: see **Schedule 2**.
- 5.2 In the event that the Intellectual Property is exploited through a Combination Package, the Parties agree to share all Combination Package Net Revenue in the proportion of fifty percent (50%) to the Organisation and fifty percent (50%) to the Charity.
- 5.3 The Institution will be solely responsible for distributing its share of the Net Revenue or Combination Package Net Revenue to researchers who contributed to the Intellectual Property in accordance with any policy of Institution, subject to the terms of this Agreement.
- 5.4 **Schedule 2** provides worked examples and additional guidance to assist the Institution and their Technology Transfer Office in complying with the provisions of this Clause 5.

6. Records and payments

- 6.1 The Institution shall keep complete and accurate accounts of all Direct Costs plus Gross Revenue and/or Combination Package Gross Revenue. Institution shall make these accounts available on reasonable notice for inspection and verification during business hours by an independent professionally qualified accountant nominated by the Charity and reasonably acceptable to Institution. The Charity shall be responsible for the accountant's charges unless the accountant finds an underpayment of at least five percent (5%) between sums due and sums paid to the Charity since the last

most recent inspection, or if none, the Commencement Date, in which event the Institution shall pay such charges together with any sums owing to the Charity.

- 6.2 The Institution, within thirty (30) days after 31 March each year, shall provide the Charity with a statement setting out Gross Revenue or Combination Package Gross Revenue received and Direct Costs incurred during the previous twelve (12) month period (or since the Commencement Date if such period is less than twelve (12) months), together with the value of the Net Revenue or Combination Package Net Revenue arising therefrom. If no revenue shall be due to the Charity, the Institution shall so report. On receipt of such statement from the Institution the Charity shall issue the Institution with an invoice for any payment due to the Charity, which will be paid by the Institution in accordance with the instructions set out in the Charity's invoice.
- 6.3 In the event that the Institution is obliged by law to deduct tax from any payment to the Charity under this Agreement, it shall provide the Charity with documentary evidence of such deduction and shall assist the Charity to seek relief under a double taxation agreement or other applicable agreements.

7. Confidentiality

- 7.1 The Charity will use all reasonable endeavours to keep confidential all information relevant to the Intellectual Property and all information provided under Clause 4 which is in the Charity's possession, and which is not disclosed by the Institution.
- 7.2 The Charity may disclose the information referred to in Clause 7.1 to a third party that is acting as its agent provided that such third party is bound by obligations of confidentiality no less protective of Institution's rights than this Agreement. Note: See also Clause 12.8.
- 7.3 Each Party agrees not to use or refer to this Agreement in any promotional activity, or use the names or marks of the other Party without the prior written consent of the other Party.
- 7.4. The Charity and the Institution shall refrain from doing anything that might obstruct any patent filing.

8. Term

This Agreement shall come into force and effect on the Commencement Date and shall remain in force and effect until terminated by operation of law or by acts of the Parties in accordance with the terms of this Agreement.

9. Termination

- 9.1 Either the Institution or the Charity may terminate this Agreement by notice in writing if the other Party commits a substantial breach of this Agreement which in the case of a breach capable of remedy will not have been remedied within thirty (30) days of the receipt by the Party in default of notice identifying the breach and requiring its remedy.
- 9.2 Expiry or termination of this Agreement by either Party for any reason shall not affect the rights and obligations of the Parties accrued prior to expiry or termination and shall not affect rights or obligations, including but not limited to, Clauses 1, 4, 5, 7, 9.2, 10, 11 and 12, which expressly or by implication are intended to continue or come into force on or after such expiry or termination.

10. Warranties and liabilities

- 10.1 Each Party warrants that it has the right to enter this Agreement.
- 10.2 No warranty is provided by either Party that the Intellectual Property does not infringe any intellectual property of a third party.
- 10.3 The Institution will during and after the period of this Agreement, indemnify and hold harmless the Charity and its employees and agents against all liability, loss, damage, cost or expense which may result directly from the use or commercialisation of the Intellectual Property.

11. Law and Jurisdiction

11.1 Governing law

- 11.1.1 The validity, construction and performance of this Agreement shall be interpreted in accordance with English Law (without reference to its conflict of laws principles).

11.2. Mediation and Arbitration

- 11.2.1 The Parties shall resolve any dispute or claim arising out of or in connection with this Agreement in accordance with the following procedure.
 - i. The Parties shall first attempt to amicably resolve the matter through negotiations between senior executives of the Parties, who have authority to settle the same. If the matter is not resolved by such negotiation within thirty (30) days of receipt of a written 'invitation to negotiate', the Parties will resolve the matter in good faith through mediation and arbitration.
 - ii. Any dispute, controversy or claim arising under, out of or relating to this Agreement and any subsequent amendments of this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be Vienna, Austria. The language to be used in the mediation shall be English.
 - iii. If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within 60 (sixty) days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules.
 - iv. Alternatively, if, before the expiration of the said period of 60 (sixty) days, either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The arbitral tribunal shall consist of a sole arbitrator.
 - v. The place of arbitration shall be Vienna, Austria. The language to be used in the arbitral proceedings shall be English.

12. Miscellaneous

12.1 Assignment

- 12.1.1 Neither Party shall assign nor transfer any interest in this Agreement, nor assign any claims for money due or to become due during this Agreement, without prior written approval of the other Party.

12.2 Notices

12.2.1 Any legal notice required to be given under this Agreement shall be given by letter, with all delivery charges prepaid and addressed to the Parties as follows:

In the case of the Charity:

For the attention of:
Dr Rainer Riedl
Address: Am Heumarkt 27/1, 1030 Wien, Austria

In the case of the Institution:

For the attention of: *** **
Address: ***

With a copy to:

With a copy to:

Director of Corporate Partnerships
Address: LifeArc, Lynton House, 7-12 Tavistock Square, London WC1H 9LT

12.2.2 For clarity, the Parties may change the address for legal notice at any time, following notice being given in accordance with Clause 12.2.1.

12.2.3 Any notice so given shall be deemed to have been served:

- (a) in the case of delivery by hand, when delivered; or
- (b) in the case of sending by registered post:
 - (i) when delivered and signed for, if a Business Day, and if not a Business Day, on the following Business Day.
- (c) in the case of sending by courier:
 - (i) when delivered, if a Business Day, and if not a Business Day, on the following Business Day.

Changes and amendments

12.3 No amendment, consent or waiver of terms of this Agreement shall bind either Party unless in writing and signed by all parties. Any such amendment, consent, or waiver shall be effective only in the specific instance and for the specific purpose given.

Severability of provision

12.4 If any provision of this Agreement is declared void or unenforceable by any judicial or administrative authority, this will not *ipso facto* nullify the remaining provisions of this Agreement and the provision of this Agreement so affected will be curtailed and limited only to the extent necessary to bring it within the legal requirements.

Force majeure

12.5 No failure or omission by either Party to carry out or to observe any of the terms or conditions of this Agreement will give rise to any claim against the Party in question or be deemed a breach of this Agreement if such failure or omission arises from any cause beyond the reasonable control of that Party.

Entire agreement

12.6 This Agreement embodies the entire agreement between the parties as to the subject matter hereof and merges all prior discussions and no provision of this Agreement may be changed except by the mutual written consent of the parties.

Third party rights

12.7 To the maximum extent permissible by law (unless this Agreement states otherwise), any other third party right is excluded from applying to this Agreement.

Agency

12.8 Nothing in this Agreement creates, implies or evidences any partnership or joint venture between the Parties, or the relationship between them of principal and agent. Neither Party has any authority to make any representation or commitment, or to incur any liability, on behalf of the other. However, the Parties recognise that the Charity may use a technology transfer/intellectual property management agent. At the time of this Agreement, that agent is LifeArc (as defined above).

Discrepancies

12.9 In the event of any discrepancy between the terms and conditions of this Agreement and the terms and conditions of the Grant, the terms and conditions of this Agreement shall take precedence.

Interpretation

12.10 This Agreement must be read and construed in the context of the Terms and Conditions of the Grant and any associated Award Letter. However, in the event of irreconcilable difference, the terms and conditions of this Agreement shall take precedence.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their authorised signatories.

Signed for and on behalf of **the Charity**:

Signature..... Date.....
Name (Printed)..... Title.....

Signed for and on behalf of **Institution**:

Signature..... Date.....
Name (Printed)..... Title.....

Schedule 1 (Intellectual Property)

INSERT DETAILS HERE

Schedule 2 (Revenue Sharing)

According to the Terms and Conditions of the Grant, the revenue share due to the Charity is 50% of the relevant income (Clause 5 of this Agreement).

Examples	Calculation	Charity's share of revenue	Organisation's share of revenue
Example 1 (Where only charity funding led to IP and/or Materials being licensed to a third party)	In this example, we assume <u>the Charity's grant funding was the sole source of funding that led to income arising from commercialisation of IP and/or Materials.</u> Note: Only Project Funding is taken into account as relevant financial contribution to the project for this calculation. Thus, the Charity's share of income is 50% of 100%, which is 50%	50%	50%
Example 2 (Where Charity funding and third party funding led to IP and/or Materials being licensed to another third party)	In this example, we assume <u>the Charity's grant funding was not the sole source of funding that led to income arising from commercialisation of IP and/or Materials.</u> Note: Only Project Funding is taken into account as relevant financial contribution to the project for this calculation. In this example, we assume the Charity contributed towards 25% of the project funding. For clarity, the Institution shall distribute revenues due to third party funders, from the Institution's share of revenue. Thus, the Charity's share of revenues ought to be 50% of 25%, which is 12.5%	12.50%	87.50%
Example 3 (Where IP and/or Materials generated from Charity funding was licensed together with other IP in a Combination Package)	In this example, the Charity contributed 25% to the first component of IP (as in example 2 above), but, is combined with a second piece of (non-Charity) IP. In this case a fair weighting has to be determined by the Institution (see note below). If the weighting is determined to be 80:20 in favour of the Charity, then the revenue due will be adjusted accordingly: In this example, the Charity funded IP contributes 80% of the inventive contribution of the licensed package of IP. Thus, the Charity's share of revenues ought to be 80% of 12.5%, which is 10%.	10%	90%

In this Schedule 2: Project Funding means directly incurred costs only, i.e. costs arising as a direct result of the specific piece of research, including staff, travel and subsistence, consumables and equipment. For clarity, Project Funding excludes directly allocated costs, estates costs, and indirect (overhead) costs.

Note on calculating the Weighting Ratio (WR):

It is plausible that the Institution may wish to license a package of Intellectual Property (IP) to a third party for commercial exploitation. That package of IP may contain the Charity-funded IP that is the subject of this Agreement, plus additional IP that was generated independently.

For example, the package of licensed IP may contain a Charity-funded patent (or know-how) plus a patent (or other IP or know-how), which exemplifies particular claims in the original Charity-funded patent. To calculate the WR, one must consider the relative inventive contribution of each component in the package of licensed IP.

Thus, where the Charity funded the generation of data which contributed to a main patent application with broad claims, the inventive contribution may be, for example, 80% of a licensed package, and a subsequent patent application (or other IP), which exemplifies a number of claims, might have a relative inventive weight of 20% of that licensed package.

Consequently, where the Charity funded the whole of the research that gave rise to the first component of IP, the revenue share due to the Charity would be reduced by 20%, in the example given above.

For clarity, where the Charity funded only part of the research which gave rise to the first component of IP, the revenue share due to the Charity should be normally be reduced *pro rata* according to project funding, used up to the date of patent filing, before going on to calculate any further reduction that may be necessary to the Charity revenue share, due to that component of IP being licensed as a package, with other non-Charity IP.