

COLLABORATION AGREEMENT

THIS AGREEMENT is made on the day of 2008 by and between

(1) **KING'S COLLEGE LONDON**, a university incorporated by Royal Charter, of Strand, London WC2R 2LS, United Kingdom ("King's")

and

(2) **INSTITUTION** whose principal place of business is situated at [address] (the "Institution")

which are also jointly referred to herein as the 'Parties' or individually as a 'Party'.

WHEREAS

(A) The Parties wish to collaborate on an academic programme of research on (the 'Programme'), and

(B) The Parties envisage that the Programme will entail the mutual exchange of data and/or materials between themselves,

IT IS THEREFORE HEREBY AGREED by the Parties that the following terms and conditions shall apply to their collaboration on the Programme and use of each others' data and materials.

1. DEFINITIONS AND INTERPRETATION

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

"Effective Date" means the date first above written.

"Material" means the material or materials specified in Schedule 1. "Material" includes any and all tissue and DNA, any progeny, derivatives, subunits or modifications thereof and includes any and all clinical information associated with the Materials.

"King's Material" means Material supplied by King's to the Institution and/or the Recipient Scientist.

"Institution Material" means Material supplied by the Institution to King's and/or King's Scientist.

"Data" means the data specified in Schedule 1. "Data" includes any and all data and information generated by King's, including, but not limited to, SNPs, the results of genotyping and other bioassays.

"King's Data" means Data supplied by King's to the Institution and/or the Recipient Scientist.

"Institution Data" means Data supplied by the Institution to King's and/or King's Scientist.

"Programme" means the particular research programme set out in Schedule 2.

"Recipients" means the individuals below who are employees of one of the Parties

(i) the scientist at the Institution ("Recipient Scientist"), and

- (ii)the scientist at King's ("King's Scientist"). The expression "Parties" includes the Recipients.

2. THE PROGRAMME & PROGRAMME RESULTS

- 2.1 Each Party shall supply the levels of manpower, Material, resources and commitment mutually agreed as its contribution to the Programme and shall endeavour to ensure the accuracy of all such contributions and promptly to correct any error therein of which it becomes aware. For the avoidance of doubt, any data, information or materials which one Party supplies to the other in the course of the Programme shall represent Confidential Information or Background IP (as defined in clause 2.2) belonging to that Party. Unless specifically agreed in writing between the Parties, each Party shall be responsible for its own costs in carrying out the Programme.
- 2.2 Nothing in this Agreement shall affect the ownership of intellectual property rights existing prior to this Agreement or generated outside the Programme which one Party makes available to the other in the course of the Programme ("Background IP"). If one Party makes available any Background IP that it owns or controls to the other Party in the course of the Programme, the Party receiving such Background IP shall treat it as Confidential Information belonging to the other Party. For the avoidance of doubt, the King's Material and/or King's Data comprises Background IP belonging to King's. Should a licence be required by a Party to use the other Party's Background IP in order to use or exploit Research Results (as defined in clause 2.3) or Programme Results (as defined in clause 2.4) commercially, the Party owning or controlling such Background IP shall, to the extent that it is free to do so, grant such a licence on fair and reasonable terms to be agreed separately in accordance with the principles set out in clause 2.7.
- 2.3 The results of the Programme that arise from the use of the Material, including any new discovery, improvement or invention and any intellectual property rights therein ("Research Results") shall be owned by the Party which generates them, and each Party hereby grants the other a non-exclusive, royalty-free, licence to use its Research Results for its own academic, non-commercial research purposes, subject to the obligations of confidentiality herein. Research Results which are generated by both Parties shall be jointly owned by them, with each Party having an undivided interest therein and being free to use such Research Results for its own academic, non-commercial purposes as if it had been the sole owner thereof, except as provided for elsewhere herein and subject to the obligations of confidentiality set out in this Agreement. Where the Parties jointly own any Research Results, neither of them shall do anything with regard to the jointly-owned results that would prejudice the rights of the other joint owner.
- 2.4 The results of the Programme that arise from the use of the Data, including any new discovery, improvement or invention and any intellectual property rights therein ("Programme Results") shall be jointly owned by them, with each Party having an undivided interest therein and being free to use such Programme Results for its own academic, non-commercial purposes as if it had been the sole owner thereof, except as provided for elsewhere herein and subject to the obligations of confidentiality set out in this Agreement. Neither Party shall do anything with regard to the jointly-owned results that would prejudice the rights of the other joint owner.
- 2.5 In the event that a Party, whether acting directly through a Recipient or not, creates any Research Results or Programme Results either relating to the Material or the Data or as a result of the Programme generally, that Party shall notify the other Party of the fact within a period not to exceed 45 days of the creation of such Research Results or Programme Results; the Party being notified shall treat all such information disclosed to it as Confidential Information belonging to the other Party. In addition, the each Party shall provide the other Party with annual reports detailing Programme Results that it generates.
- 2.6 Where the Parties jointly own any Research Results or Programme Results, they shall agree between themselves a co-ordinated strategy for their commercial protection and exploitation which deals with such matters as the management and protection of those Research Results or Programme Results, terms of any licences or rights for third parties to use the Research Results or Programme Results, the territories and commercial markets for such exploitation, the costs of commercial protection and the distribution of any net income arising from the commercial exploitation of the Research Results or Programme Results. In making such arrangements, the Parties shall ensure that the distribution of net revenue from the commercial exploitation of jointly-owned Research Results or Programme Results between themselves fairly reflects their contribution to those Research Results or Programme Results,

whether financial or scientific, and takes due account of all relevant factors, including *inter alia* the use of Background IP belonging to a Party, the costs of further research and development necessary to commercialise the Research Results or Programme Results and the costs of commercial protection. Where appropriate, the Parties' arrangements will also take due account of the interests and rights of other organisations which have funded the creation of the joint Research Results or Programme Results.

- 2.7 The Parties undertake to negotiate the terms of all terms and agreements relating to the exploitation, use, development and protection of Research Results or Programme Results and Background IP in good faith and to endeavour to agree terms amicably between themselves. However, should they be unable to agree terms amicably within a period of six months from the initiation of discussions, the matter shall be settled finally by reference to an expert independent umpire who is acceptable to the Parties. Should the Parties be unable to agree on a suitable umpire, they shall ask the President for the time being of the Licensing Executives Society of Britain and Ireland to nominate a suitable person to act as umpire. Any decision reached in this way by an expert independent umpire shall be binding on the Parties. All negotiations regarding the terms for the use, licensing, assignment or protection of Research Results or Programme Results shall be handled by the appropriate official in each Party's organisation who is responsible for technology transfer and/or the protection of intellectual property.

3. ACCESS TO & USE OF MATERIAL AND/OR DATA

- 3.1 On signature hereof, each Party shall supply any Material and/or Data specified in Schedule 1 to the other Party, which shall procure that the Material and/or Data is solely used for the Programme and within the laboratory of the Recipient working for it, and not for any other purpose whatsoever, including but not limited to, commercial purposes, commercially-sponsored research or other research use.
- 3.2 In the event that a Party agrees to make further material and/or data available to the other as part of the Programme, this shall be effected by means of the legal signatories of Parties signing an updated version of Schedule 1 which identifies any such additional material and/or data, at which point they shall also be classified as Material and/or Data.
- 3.3 The Party owning Material and/or Data shall retain ownership of the Material and/or Data and all intellectual property rights therein.
- 3.4 Each Party shall procure that the Recipient who works for it keeps any Material and/or Data belonging to the other Party supplied to it under this Agreement secure within his/her laboratory on its premises and that access to such Material and/or Data is restricted to the Recipient and those staff working under his/her direct supervision on the Programme.
- 3.5 Neither Party shall supply Material and/or Data belonging to the other to a third party, or to any of its staff, students, consultants or agents other than the Recipient and those staff working under his/her direct supervision working on the Programme.
- 3.6 Neither Party, nor any of its staff students, consultants or agents shall seek to trace, contact or identify any individual, either directly or through a third party, whose material, details or data is supplied by the other Party as part of their Material and/or Data, or to recruit any such individual to take part in any other study or survey. Nor shall they assist a third party to carry out such activities in any way.
- 3.7 The terms and conditions set out herein are supplemental to any legal or regulatory requirements governing the handling, use and disposal of Material and/or Data that may be in force from time to time, which legal or regulatory requirements will take precedence over any term of this Agreement.

4. CONFIDENTIALITY & PUBLICATION

- 4.1 The Parties shall ensure that information supplied to or deriving from the Programme is exchanged between themselves on a confidential basis, and shall procure that any of their employees, students, consultants, sub-contractors or agents who participate in the Programme are made aware of, and abide by, this requirement.
- 4.2 Confidential information in any form whatsoever which is supplied, including, but not limited to, data supplied, results of genotyping or other bioassays generated from individual or pooled samples of the

DNA, made available or comes into the possession of either Party and which relates to the business or scientific affairs or finances or other confidential matters of the other Party ("Confidential Information") shall only be used for the purpose for which it is disclosed, shall only be disclosed to those of the receiving Party's officers, employees and students on a strict "need to know" basis after informing them of their obligations under this clause, and shall be kept secret and shall not be disclosed or permitted to be disclosed to any third party for any reason without the prior written permission of the other Party. For the avoidance of doubt, King's Material and/or King's Data constitutes Confidential Information belonging to King's. Each Party shall ensure that the full confidentiality of all data relating human subjects is fully maintained.

- 4.3 Each Party shall ensure that any of its employees, directors and students involved or engaged in the Programme shall maintain the secrecy of the other Party's Confidential Information, and if a Party intends to use the services of sub-contractors, consultants, agents, visiting fellows, students or other third parties who are not automatically bound to the terms of this Agreement by that Party's signature hereof to work on, advise on or manage any aspect of the Programme, or intends to reveal any of the results of the Programme to any such persons or organisations, that Party shall first ensure that such sub-contractors, consultants, agents, visiting fellows, students or other third parties sign legally-binding agreements undertaking to abide by the same conditions of confidentiality as are set out in this Agreement *mutatis mutandis*.
- 4.4 The obligations of confidence referred to in this Clause 4 shall not extend to any information which:-
- (a) is or becomes generally available to the public otherwise than by reason of a breach by the receiving Party of any provision of this Clause 4; or
 - (b) is known to the receiving Party and is at its free disposal prior to its receipt from the other, as evidenced by written record; or
 - (c) is subsequently disclosed to the receiving Party without obligations of confidence by a third party owing no such obligations to the disclosing Party in respect thereof, as evidenced by written record; or
 - (d) is required to be disclosed in accordance with applicable law or by appropriate regulatory authorities, in which circumstances the receiving Party shall wherever practicable give reasonable advance notice of the intended disclosure to the other Party, and the relaxation of the obligations of confidentiality shall apply only for as long as is necessary to comply with the relevant law or regulatory requirement and solely for the purposes of such compliance.
- 4.5 The obligations of confidentiality in this Clause 4 shall survive expiry or termination of this Agreement and the end of the Programme by five years.
- 4.6 The Parties shall ensure that any publication or dissemination of the results of the Programme is managed in a co-ordinated manner and that all publications shall be made jointly giving due credit to all Parties and individuals involved and appropriate acknowledgement of the source of the Material, unless requested to the contrary by a Party with regard to itself. The provisions of this clause 4 shall not be interpreted to prevent publication of research findings resulting from the use of the Material in accordance with normal academic practice. Each Party shall provide the other with a copy of any proposed publication at least thirty (30) working days prior to submission for publication to give the other Party the opportunity of requesting the removal of any of its Confidential Information or any Research Results or Programme Results that may require commercial protection. The Party wishing to publish shall delete or amend such information from the proposed publication prior to its being published as agreed with the Party owning such information or delay publication until any necessary protection has been obtained and the Parties have agreed that publication may proceed. If a Party does not receive comments from the other Party within the specified thirty (30) working day review period regarding said proposed publication, it shall be free to proceed with publication without further delay, subject to the other terms of this Agreement.
- 4.7 Except as expressly provided for herein, neither Party shall use the other Party's crest, logo, trademarks, registered image, name or the name of any of its staff or students for any purpose in connection with the Programme without the express permission of that other Party or individual, except that nothing in this clause shall restrict, delay, impede or prevent a Party from using another Party's name when making disclosures under relevant freedom of information legislation. The content and

timing of any internet or press releases regarding the Programme shall be agreed by all Parties and individuals involved, such agreement not unreasonably to be withheld.

5. WARRANTIES & LIABILITIES

- 5.1 Neither Party shall hold the other Party liable for any damages, dispute or injury arising during the undertaking of the Programme or from the effects of the use to which the other Party or any third party may put Programme Results, unless caused by the wilful act or negligence of an employee, agent or student of that Party. Notwithstanding any provision of this Agreement, neither Party shall be liable to the other for any indirect or consequential loss, damage, claims or demands, including without limitation any economic loss or other loss of income, profits, business, opportunity or goodwill whether by breach or by negligence and whether in contract, tort or otherwise.
- 5.2 Background IP (including all Material and Data) supplied and Research Results or Programme Results created pursuant to this Agreement is understood and agreed to be experimental in nature and may have hazardous properties or properties and safety aspects that may not have been established. ALL SUCH BACKGROUND IP, RESEARCH RESULTS AND PROGRAMME RESULTS ARE PROVIDED 'AS IS' AND THE OWNING PARTY OR PARTIES MAKE NO EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS OR UNDERTAKINGS OF ANY KIND REGARDING THEIR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY TO BE USED AS PART OF ANY PARTICULAR REGULATORY SUBMISSION, OR THAT ITS USE WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS. NEITHER PARTY WARRANTS THAT MATERIAL IT SUPPLIES IS FREE OF EXTRANEOUS AGENTS OR BIOLOGICALLY ACTIVE CONTAMINANTS (FOR EXAMPLE, BUT NOT LIMITED TO, TSES) WHICH MAY HAVE BEEN PRESENT IN DONOR SAMPLES.
- 5.3 Except to the extent proscribed by law, each Party hereby assumes all liability for damages which arise from its use, storage or disposal of the other Party's Background IP (including Material and Data), and shall fully and effectively indemnify, defend and hold harmless that other Party against all legal actions arising from the use which it itself puts, or permits to be put, the Material. Neither Party shall be liable to the other for any loss, claim or demand made by the other Party, or made against that other Party by any third party, due to or arising from the use of the Material by that Party, except to the extent provided for by law.
- 5.4 The terms and conditions in this Agreement are agreed to be *in lieu* of any warranties, obligations or conditions implied by law, trade usage, custom or otherwise as to the merchantable quality or the fitness for any particular purpose of the services or items being supplied hereunder.

6. TERM AND TERMINATION

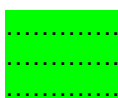
- 6.1 The term of this Agreement and the Programme shall be a period of [REDACTED] years from the Effective Date (the "Term"). Each Party may only use the other's Material during the Term.
- 6.2 The Term may be extended by mutual consent and by written permission signed by both Parties no less than six weeks before the expiry of the Term.
- 6.3 This Agreement may be terminated by either Party by giving prior written notice of such termination of not less than thirty (30) working days to the other Party.
- 6.4 Any Material supplied by a Party and any copies thereof made by or in the possession of or under the control of the other Party pursuant to this Agreement shall remain the property of the supplying Party at all times and shall be immediately and automatically returned or, if so required by the supplying Party, destroyed:-
- 6.4.1 on termination of this Agreement; or
- 6.4.2 in the event that the a Party is in breach of its obligations under this Agreement and fails to remedy such breach within thirty (30) working days of receiving notice from the other which clearly identifies and gives details of the breach; or

- 6.4.3 a Party enters into bankruptcy or liquidation, has a receiver, liquidator or administrator appointed over the whole or any part of its assets, becomes insolvent or is otherwise unable to pay its debts as they fall due (with the exception of liquidation for the specific purpose of an amalgamation, reconstruction or other reorganisation such that the body resulting from the reorganisation agrees to be bound by and to assume the obligations imposed on it herein *mutatis mutandis*).

7. NOTICES

- 7.1 Any notices served under this Agreement shall be made in writing and sent by courier with a simultaneous copy sent by fax addressed to each Party at the address shown below, or to such other address as a Party may from time to time have notified each of the other Parties as being its address for such correspondence:-

- For Institution



Tel:
Fax:

- For King's

Dr Mike Shaw
Director of Technology Transfer
King's College London Business Limited
8th Floor Capital House
42 Weston Street
London SE1 3QD
United Kingdom

Tel: +44 (0) 20 7848
Fax: +44 (0) 20 7848 3193

8. MISCELLANEOUS

- 8.1 Neither Party shall assign or sub-contract its duties, obligations or benefits under this Agreement without the prior written permission of the other Party, such permission not to be unreasonably withheld.
- 8.2 Each Party shall ensure that its work on the Programme and use of the Material or Data complies fully with all applicable local, government and international laws, regulations and guidelines which are effective during the period of this Agreement, including those governing health and safety, clinical trials, data protection, race relations, equal opportunities and where relevant, the use of human subjects and good clinical practice. For the avoidance of doubt, the use of the Material or Data by the Parties shall be in compliance with all applicable laws, regulations and guidelines relating to that activity, in force in the country where the Material is to be used: for the United Kingdom, such laws, regulations and guidelines include, but are not limited to, the Human Tissue Act 2004 (<http://www.opsi.gov.uk/acts/acts2004/20040030.htm>) and any subsequent re-enactment thereof and the MRC's Guidelines on Use of Human Tissue and Biological Samples for use in Research (<http://www.mrc.ac.uk/PolicyGuidance/EthicsAndGovernance/UseofHumanTissue/index.htm>).
- 8.3 Each Party undertakes to secure all necessary approvals from the relevant competent national or local research ethics committee(s) before undertaking any part of the Programme which requires ethics committee approval, and where any part of the Programme takes place in a hospital or NHS Trust, the

Party involved shall first obtain all necessary approvals, indemnities and agreements from that hospital or NHS Trust.

- 8.4 If any part or any provision of this Agreement proves to any extent invalid or unenforceable in law, including the laws and regulations of the European Union, the remainder of such provision and all other provisions of this Agreement shall remain valid and enforceable to the fullest extent permissible by law, and such provision shall be deemed to be omitted from this Agreement to the extent of such invalidity or unenforceability. The remainder of this Agreement shall continue in full force and effect and the Parties shall negotiate in good faith to replace the invalid or unenforceable provision with a valid, legal and enforceable provision that has an effect as close as possible to the provision or terms being replaced.
- 8.5 No failure to exercise or delay in the exercise of any right or remedy which any Party may have under this Agreement or in connection with this Agreement shall operate as a waiver thereof, and nor shall any single or partial exercise of any such right or remedy prevent any further or other exercise thereof or of any other such right or remedy.
- 8.6 This Agreement is not intended to establish, and shall not be construed by any Party as establishing, any form of business partnership between themselves.
- 8.7 Nothing in this Agreement shall confer or purport to confer on any third party any benefit or any right to enforce any term of this Agreement and shall not require the permission of any third party for it to be amended or terminated.
- 8.8 This Agreement and its Schedules, together with any documents referred to herein, supersedes and terminates all other agreements, terms, understandings and representations regarding the Programme whether written, oral, express or implied between the Parties and constitutes the entire agreement between the Parties concerning the Programme and Material and/or Data and represent the sole basis on which they have entered into this Agreement.
- 8.9 In the event of any difference, dispute or question, arising from this Agreement or the Programme, the Parties involved will endeavour to settle such matters amicably between themselves in good faith. Should the Parties still be unable to reach agreement between themselves within a period of thirty (30) working days, except as provided for in clause 2.7, the matter shall then be settled finally by referring it promptly to the *Model Mediation Procedure* promoted by the Centre for Effective Dispute Resolution using Alternative Dispute Resolution techniques.
- 8.10 The obligations in Clauses 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 3.3, 3.4, 3.5, 3.6, 3.7, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 5.1, 5.2, 5.3, 5.4, 6.4, 7.1, 8.1, 8.2, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.11, and 8.12 shall survive termination of this Agreement.
- 8.11 This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors in title and assigns, and any amendments to this Agreement shall be agreed in writing by all Parties, their successors in title or their assigns.
- 8.12 This Agreement is made and shall be interpreted in accordance with the laws of England and Wales, and except as provided for elsewhere herein, the Parties shall submit to the jurisdiction of the English Courts sitting in England.

SIGNATURES & UNDERTAKINGS

Signed for and on behalf of **THE INSTITUTION**

Name (.....) Date.....
Title (.....)

Signed for and on behalf of **KING'S COLLEGE LONDON**

Name (.....) Date.....
Title (.....)

Undertakings by the RECIPIENTS

I have read the above terms and conditions of contract between the King's and the Institution and understand that they apply to me in my undertaking of the Programme and use of the Material and/or Data. I agree to carry out the Programme and use the Material and/or Data on the same conditions that apply to the Institution in this Agreement, except where they apply solely to the Institution as an organisation, and I shall also use all my reasonable endeavours to enable the Institution to fulfil its obligations under this Agreement. If any dispute arising under this Agreement is taken to mediation as provided for in clause 8.9, I undertake to participate in that mediation in good faith to the extent required of me.

Signed Date.....
(by the **RECIPIENT SCIENTIST**)

Name:.....

Signed Date.....
(by the **KING'S SCIENTIST**)

Name:.....

SCHEDULE 1: Description of Material and/or Data

1. Institution Material and/or Data

2. King's Material and/or Data

SAMPLE ONLY NOT FOR USE

SCHEDULE 2: Description of Programme

SAMPLE ONLY NOT FOR USE