

MATERIALS SUPPLY AND USE AGREEMENT

This Agreement is made on the day of 2008

BETWEEN

(1) **KING'S COLLEGE LONDON**, an institution incorporated by Royal Charter, of Strand, London, WC2R 2LS, England ("King's")

and

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

In respect of the following Material:

(3) [*Description of Material*]

WHEREAS

(A) King's, through its academic, Professor Timothy Spector (the "Supplier"), has obtained and developed the Material.

(B) The Institution and more specifically the Recipient named below wishes to obtain the Material for the purposes of academic research (the "Programme") only.

(C) King's agrees to provide the Material on the terms set out below.

NOW IT IS HEREBY AGREED AS FOLLOWS

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.

"Institution" means the Institution wishing to access the Material.

"Material" means any and all tissue and DNA, any progeny, subunits, derivatives or modifications thereof and includes any and all clinical information associated with the Materials supplied by King's to the Institution and/ or the Recipient as specified in Schedule 1.

"Programme" means the specific research set out in Schedule 2.

"Recipient" means [*scientist at the Institution*].

2. ACCESS TO AND USE OF MATERIAL

- 2.1 The Recipient at the Institution wishes to undertake research as specified in the Programme in Schedule 2.
- 2.2 King's agrees to supply the Material as specified in Schedule 1 and the Recipient at the Institution shall use the Material solely within the Recipient's laboratory for the Programme and not for any commercial purpose or commercially-sponsored research or other research purpose.

For the avoidance of doubt the use of the Material shall be subject to the provisions of this Agreement and shall be in compliance with all applicable laws, governmental regulations and guidelines relating to research with the Material in force in the country where the Material is used. For the United Kingdom, all such laws, regulations and guidelines includes, but is not limited to, the Human Tissue Act 2004 (<http://www.opsi.gov.uk/acts/acts2004/20040030.htm>), as amended or re-enacted, in force from time to time and the MRC Guidelines on Use of Human Tissue and Biological Samples for use in Research (<http://www.mrc.ac.uk/PolicyGuidance/EthicsAndGovernance/UseofHumanTissue/index.htm>).

- 2.3 King's retains ownership of the Material. No licence under any King's intellectual property is granted or implied by this Agreement.
- 2.4 Recipient acknowledges that King's has invested significant resources and intellectual input into the collection and characterisation of the Materials and may have obligations to its charity funders. Therefore, in the event that the Recipient makes or observes any new discovery, improvement or invention ("Invention") relating to the Material or as a direct result of the Programme the Institution shall:
- 2.4.1 notify King's within forty five (45) days of making or observing such Invention and King's shall treat such information as confidential to the Institution. In addition, the Institution will provide to King's at yearly intervals reports detailing the results of the Programme. All such Inventions and results of the Programme shall be the property of the Institution. The Institution hereby grants to King's the non-exclusive, royalty-free fully paid up licence to use Inventions for its internal non-commercial research purposes.
- 2.4.2 if any commercial revenues result from Recipient's use of the Material, including Inventions, King's shall be entitled to a fair and reasonable share of any such revenues that accrue to the Institution and/or Recipient, such share shall be negotiated in good faith by the parties to this Agreement.
- 2.5 **(Optional)** Transmissal fee to reimburse the Supplier for collection, preparation and distribution costs:
- Payment of the above Transmissal Fee is not to be considered a sale of the Material by King's or the Supplier and no right or licence is granted or implied as a result of the transfer of the Material to the Institution or the Recipient.
- 2.6 The Institution shall ensure the Recipient keeps the Material secure within the Recipient's laboratory at the Institution's premises and ensure that access to the Material is restricted to the Recipient and those working under his/her direct supervision on the Programme.
- 2.7 The Institution shall not supply the Material to any third party, including any person within the Institution other than the Recipient and those under his/her direct supervision.

- 2.8 The Institution and the Recipient shall not attempt to trace, contact or identify any individual whose Material is supplied or to recruit any such individual to take part in any other study or survey.
- 2.9 This Agreement shall not be interpreted to prevent or delay publication or presentation of research findings resulting from the use of the Material, provided that the Institution agrees to provide a copy of any such manuscript or abstract or presentation at least thirty (30) days prior to submission for publication or presentation to give King's the opportunity of requesting the removal of any information that may be proprietary or confidential to King's. The Recipient and Institution agree to provide co-authorship for the Supplier and appropriate acknowledgement of the source of the Material in all publications or presentations, and to provide a copy of any such publication or presentation to King's.
- 2.10 Notwithstanding anything to the contrary in this Agreement, the terms and conditions set out herein are supplemental to any legal or regulatory requirements governing the handling, use and disposal of Material that may be in force from time to time, which legal or regulatory requirements will take precedence over any term of this Agreement. Should any term of this Agreement conflict with any applicable law or prove invalid, illegal or unenforceable, such term shall be deemed omitted from the Agreement and the remainder of the Agreement shall continue in full force and effect.

3. CONFIDENTIALITY

- 3.1 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 its express written permission.
- 3.2 Confidential information in any form whatsoever which is supplied, including, but not limited to, the Materials and the associated information supplied, made available or comes into the possession of either party and which relates to the business 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 and employees on a strict "need to know" basis after informing them of their obligations under this clause, and shall be kept secret and confidential, 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.
- 3.3 The obligations of confidence referred to in this Clause 3 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 3; 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.

4. WARRANTIES/LIABILITIES

- 4.1 Any material delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. KING'S MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS. KING'S DOES NOT WARRANT THAT THE MATERIAL IS FREE OF EXTRANEOUS AGENTS, OR BIOLOGICALLY ACTIVE CONTAMINANTS (for example, but not limited to, TSE'S) WHICH MAY HAVE BEEN PRESENT IN DONOR SAMPLES.
- 4.2. Except to the extent prohibited by law, the Institution assumes all liability for damages which may arise from its use, storage or disposal of the Material. King's shall not be liable to the Institution for any loss, claim or demand made by the Institution, or made against the Institution by any other party, due to or arising from the use of the Material by the Institution, except to the extent imposed by law.

5. TERM AND TERMINATION

- 5.1 King's is willing to provide the Material for use by the Institution for a period of two years from the Effective Date (the "Term") on the terms set out herein.
- 5.2 The Term may be extended with the written agreement of King's. Permission to extend this Agreement must be sought by the Institution three (3) months before the expiry of the Term.
- 5.3 The Material and any copies thereof made by or in the possession of or under the control of the Institution pursuant to this Agreement shall remain the property of King's and shall be immediately returned or, if King's so requires, destroyed:
- 5.3.1 On termination of this Agreement; or
 - 5.3.2 In the event that the Institution is in breach of any of the conditions of this Agreement; or
 - 5.3.3 At any other time on request of King's.
- 5.4 The obligations in Clauses 2, 3 and 4 shall survive termination of this Agreement.

6. GOVERNING LAW AND JURISDICTION

The validity, construction and performance of this Agreement shall be governed by English law and the exclusive jurisdiction of the English courts.

7. MISCELLANEOUS

- 7.1 The Institution and Recipient will not assign or transfer any interest in this Agreement, in whole or in part, without prior written consent of King's.
- 7.2 No party other than a party to this Agreement shall have any rights to enforce any term of this Agreement pursuant to the Contracts (Right of Third Parties) Act 1999.

7.3 This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior discussions and agreements and no provision in this Agreement may be amended unless in writing and signed by the parties.

Signed Date.....
(For and on behalf of **THE INSTITUTION**)

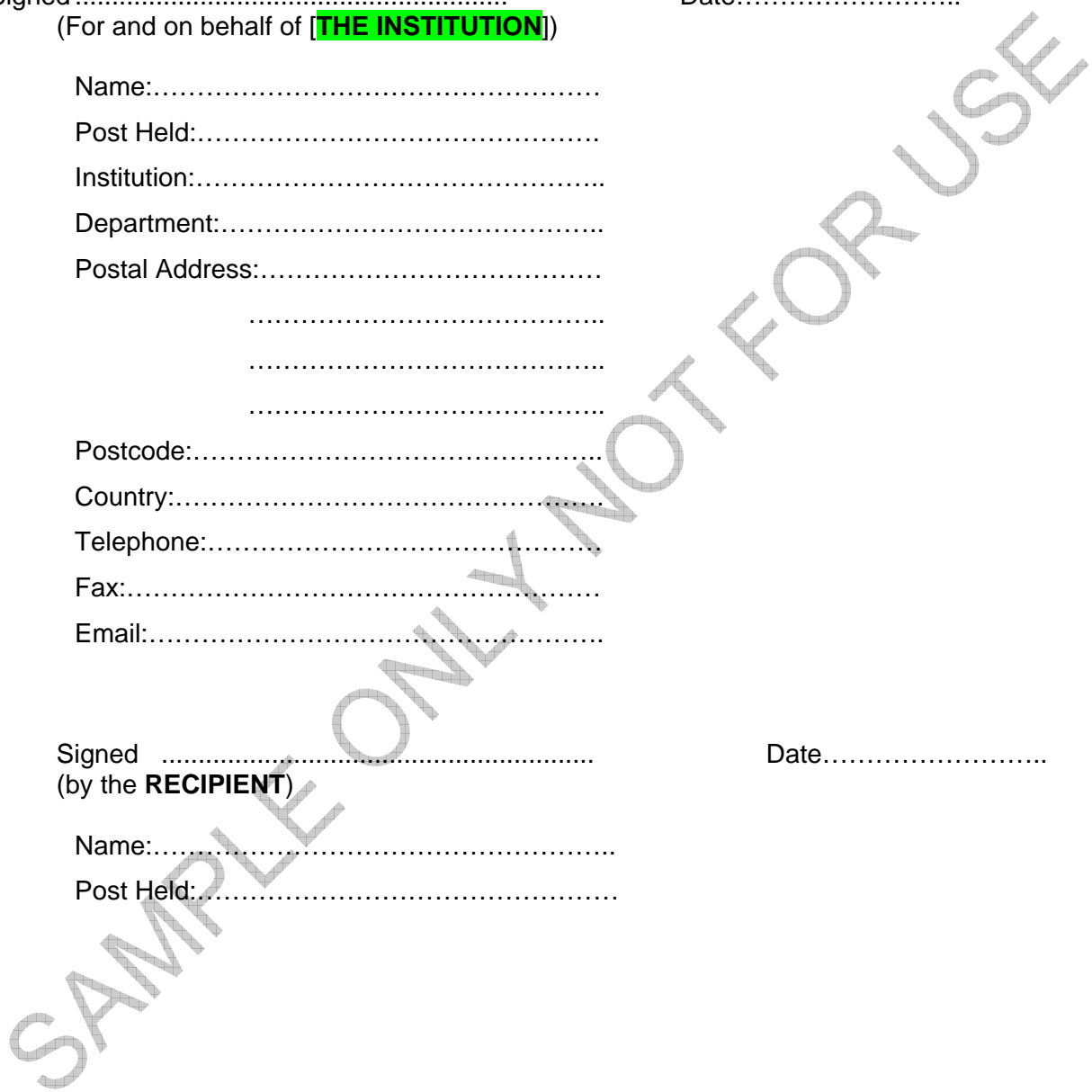
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Signed Date.....
(by the **RECIPIENT**)

Name:.....
Post Held:.....

Signed Date.....
(For and on behalf of **KING'S COLLEGE LONDON**)

Name Title.....



SCHEDULE 1: Description of Material

SCHEDULE 2: Description of Programme

SAMPLE ONLY NOT FOR USE