

**WELLCOME FUNDED INTELLECTUAL PROPERTY:
EXPLOITATION CONSENT AND REVENUE/EQUITY-SHARING AGREEMENT FOR
INNOVATOR AWARDS**

This Agreement is made between the parties whose details are set out below:

A. WELLCOME	
Name:	THE WELLCOME TRUST LIMITED , a company registered in England & Wales as Trustee of the Wellcome Trust, a charity registered in England under no. 210183 (" Wellcome ")
Company no:	2711000
Address:	Innovations Division, The Wellcome Trust, 215 Euston Road, London NW1 2BE
Contact:	Operations Manager/Operations Officer, Innovations Division, The Wellcome Trust
Tel:	+44 (0)20 7611 5757
E-mail:	Innovations@wellcome.ac.uk
B. ORGANISATION	
Name:	
Address:	
Contact:	
Tel:	
E-mail:	
C. TECHNOLOGY TRANSFER GROUP (if applicable)	
Name:	
Company no:	
Address:	
Contact:	
Tel:	
E-mail:	

THE PARTIES HEREBY AGREE as follows:

1. DEFINITIONS

- 1.1 **'Cumulative Income'** means total Net Income received as a result of exploitation of the Wellcome-funded Project.
- 1.2 **'Direct Costs'** means all reasonable patent and legal costs and other incidental expenses that are incurred directly in connection with exploitation of the Wellcome-funded Project, including official patent filing, prosecution, maintenance and renewal fees.
- 1.3 **'Equity'** means the issuing of equity or any other interest (whether by way of debenture, warrant, security or otherwise) from time to time in any company in consideration of the assignment or grant of a licence or an option thereto to such company in respect of any Wellcome-funded IP.
- 1.4 **'Exploiting Party'** means whichever of the Organisation or Technology Transfer Group (if there is one) named above as is or will be responsible for technology transfer and commercialisation matters with respect to the Wellcome-funded Project for and on behalf of the Organisation. For these purposes, **'exploitation'** includes but is not limited to commercialization by way of licence, assignment, option, sale, research collaboration or other agreement, or for cash or equity consideration.
- 1.5 **'Grant'** means the grant, details of which are set out in Schedule 1 to this Agreement.
- 1.6 **'Grant Conditions'** means Wellcome's Grant Conditions, available at www.wellcome.ac.uk as may be amended from time to time.
- 1.7 **'Gross Income'** means all cash sums or other monetary consideration actually received in respect of exploitation of the Wellcome-funded Project, including licence, signing and option fees, royalties, and milestones, but excludes any Equity or other interests (whether by way of debenture, warrant, security or otherwise) or monies paid specifically to fund the undertaking of a research programme.
- 1.8 **'Innovations'** means Wellcome's Innovation division having responsibilities including oversight of Wellcome-funded Intellectual Property.
- 1.9 **'Intellectual Property'** means any and all rights in inventions, discoveries, materials, technologies, products, data, algorithms, software, know-how, patents, databases, copyright, trademarks, design rights, applications for any of the foregoing, moral rights, and any other intellectual property rights whether or not registered or capable of registration and whether or not subsisting in the UK or in any other part of the world.
- 1.10 **'Net Income'** means Gross Income less:
- (a) Direct Costs and
 - (b) any applicable taxes on Gross Income and Direct Costs;
- 1.11 **'Organisation'** means the organisation named in the details set out above.
- 1.12 **'Other Party(s)'** means the Party(s) which is not the Exploiting Party.

- 1.13 **'Technology Transfer Group'** means a body which is responsible for providing technology transfer services to the Organisation and which has been approved by Wellcome to carry out exploitation activities with respect to the Wellcome-funded IP, details of which are set out above. Where the Organisation is a company the 'Technology Transfer Group' function may be carried out by its finance, licensing or business development department(s).
- 1.14 **'Wellcome'** means The Wellcome Trust Limited as trustee of the Wellcome Trust, a charity registered in England with number 210183, details of which are set out above.
- 1.15 **'Wellcome-funded IP'** means any and all Intellectual Property which is or has been created, exemplified or developed (whether in whole or in part) using the Grant, whether such Grant funds are used before or after an invention disclosure or patent filing, and whether or not any person in receipt of Wellcome funding or working on a Trust-funded activity is named in invention disclosure records. Unless specified otherwise in the Award Letter, "Wellcome-funded IP does not include the copyright in artistic works, books, articles, scientific papers, lectures or audio or visual aids to the giving of lectures or teaching.
- 1.16 **'Wellcome-funded Project'** means the research funded by the Grant.

2. **CONSENT TO EXPLOIT WELLCOME-FUNDED IP**

- 2.1 In consideration for entering into the terms of this Agreement and pursuant to the Grant Conditions, Wellcome consents to the exploitation of the Wellcome-funded IP in accordance with the details set out in the Schedules to this Agreement.

3. **REVENUE SHARING**

- 3.1 In consideration for consent being granted pursuant to clause 2 above, the Exploiting Party shall share Gross Income and Equity received in respect of a Wellcome-funded Project as set out in this clause 3.
- 3.2 The Exploiting Party shall first determine if:
- (a) the Grant (together with other Wellcome funds) is the sole source of funding for the Wellcome-funded Project, in which case clauses 3.3 and 3.4 shall apply to the total Gross Income or Equity received in respect of that Wellcome-funded Project, or
 - (b) the Grant (together with other Wellcome funds) is not the sole source of funding for the Wellcome-funded Project, in which case the Gross Income or Equity received in respect of that Wellcome-funded Project shall be pro-rata calculated to take into account:
 - i) the inventive contribution of the inventors; followed by
 - ii) the proportionate funding contributions of Wellcome, the Organisation and other third party funders of each inventor as appropriate (such funding contribution to exclude any salary support provided by the Organisation from its internal funding, overhead or other indirect costs including for the avoidance of doubt higher education funding council funding);

and the revenue-sharing formulae set out in clauses 3.3 and 3.4 below shall then apply to the portions of Gross Income or Equity attributed to the Wellcome contribution pursuant to this clause 3.2(b).

Income Sharing:

3.3 Where income is received then the Exploiting Party shall in respect of each individual Wellcome-funded Project that is exploited:

- (a) receive Gross Income due;
- (b) deduct and reimburse as appropriate any and all Direct Costs;
- (c) distribute remaining Net Income received in the following revenue shares (determined by reference to Cumulative Income) as follows:

Cumulative Income	Organisation and Technology Transfer Group	Wellcome
Up to £500,000	60% (sixty per cent)	40% (forty per cent) subject to paragraph (d) below
£500,001 - £5 million	60% (sixty per cent)	40% (forty per cent)
> £5 million	Parties to determine the revenue share percentage in good faith taking into account the contribution of the parties and the Technology Transfer Group management input. Wellcome's share will not be greater than 40%.	

- (d) Organisations may request in Schedule 1 (G) permission to retain Wellcome's share of the first £500,000 of Cumulative Income, as calculated under this clause 3.3, in order to apply it in support of new translational activities. If Wellcome agrees to this request then no distribution of such income to Wellcome shall be required provided that (i) the Organisation complies with the reporting obligations in clause 4.1, and (ii) such retained income is spent by the Organisation in a manner consistent with the description set out by the Organisation in Schedule 1 (G). However, Wellcome retains the right, at its discretion, for the Wellcome share of Cumulative Income to be distributed to Wellcome.

Equity sharing and potential future investment

3.4 Where rights to take Equity are received then the Exploiting Party shall in respect of each individual Wellcome-funded Project that is exploited:

- (a) share any Equity received in the following proportions, and

Organisation and Technology Transfer Group	Wellcome
60% (sixty per cent)	40% (forty per cent)

- (b) use diligent efforts to ensure that, in consultation with Wellcome, the Equity is issued on terms whereby the proportionate shareholdings due to Wellcome are either (i) issued directly to Wellcome, or (ii) held on trust for Wellcome until such time as the Organisation realises the Equity as cash when it will be shared 60:40 as above.
- 3.5 For the avoidance of doubt, the Wellcome's share of any Net Income or Equity shall be allocated to Wellcome prior to the deduction of any reward to the Organisation's employees or students who are inventors of the Wellcome-Funded IP. The Organisation shall be solely responsible for the payment of such reward (in accordance with its internal policies) out of the revenue and equity share to which it is entitled under clauses 3.3 and 3.4 above.
- 3.6 Notwithstanding the terms of this clause 3, the Organisation and its Technology Transfer Group shall be free to agree how to share between themselves any share of Net Income and/or Equity due to either or both of them under this Agreement.

4. ACCOUNTING, REPORTING AND PAYMENTS

- 4.1 Within three (3) months following the annual accounting date set out in Schedule 1, the Exploiting Party shall provide to the Other Party(s) a statement or statements setting out financial information for the preceding 12-month period ending on such annual accounting date (unless alternative reporting periods are mutually agreed) in respect of each Wellcome-funded Project commercialised, including Gross Income, Net Income, Cumulative Income, Direct Costs, Equity, revenue shares and taxes. In addition, if an Organisation elects to retain Wellcome's share of Cumulative Income in accordance with clause 3.3, such statements must also include details of any retained revenue and how it has been used to support new translational activities. All such statements shall include a breakdown of the calculations on which the amounts involved were determined. The Exploiting Party shall send to the Other Party(s) the appropriate payments required in respect of such statements within thirty (30) days of receipt of the proper VAT invoice(s).
- 4.2 The Exploiting Party shall keep accurate records and accounts, and the Other Party(s) shall have the right to audit these in accordance with standard UK accounting practice on request. The Exploiting Party shall provide the Other Party(s) with copies of supporting financial documentation on reasonable request. Late payments shall be subject to interest payable on demand at the rate of 4 (four) per cent above the then current Bank of England base rate. Interest shall be calculated daily and compounded quarterly from the due date to the actual date of payment inclusive.
- 4.3 All payments shall be made in pounds sterling unless otherwise agreed, and shall be exclusive of any taxes or duties that may be imposed, including value added tax, which shall where applicable be payable in addition at the rate in force at the due time for payment.
- 4.4 The Organisation shall be free to agree accounting, reporting and payment practices with its Technology Transfer Group in respect of any revenue shares due to them under this Agreement.
- 4.5 If Innovations takes over responsibility as Exploiting Party in accordance with the Grant Conditions, then references to Exploiting Party herein shall be construed as

references to Innovations, and Innovations shall share any Gross Income or Equity received accordingly.

5. MONITORING WELLCOME-FUNDED IP

5.1 With respect to the Wellcome-funded IP, the Exploiting Party must:

- (a) unless otherwise scheduled to this Agreement, provide to the Other Party(s) as and when they arise:
 - i) copies of any signed agreements entered into; and
 - ii) details of any patent applications, grants and abandonments (including title, filing number and date);
- (b) deliver at least annually an exploitation report detailing the commercialisation activities for that year to the Other Party(s); and
- (c) arrange and hold update meetings at the reasonable request of any Party, but not more frequently than annually other than in exceptional circumstances.

Wellcome's copies of annual reports, signed agreements and other documents referenced above should be sent to **InnovationsOperations@wellcome.ac.uk**

5.2 The party(s) receiving information about exploitation activities from the Exploiting Party pursuant to this Agreement listed in Schedule 3 or otherwise shall keep such information confidential. For these purposes, 'information' includes but is not limited to any data, results, inventions, intended publications, intended or pending patent applications, designs, plans, agreements, commercial and/or financial information, whether disclosed in writing or orally. However, 'information' does not include information which is already in the public domain, which is otherwise lawfully known to the receiving party at the time of disclosure, is obtained lawfully from a third party or independently developed by the receiving party, or which is required to be disclosed in order to comply with a legal requirement. Where disclosure of information is required under the Freedom of Information Act 2000 from a party designated as a public authority under the Act and such information relates to another party, the Organisation shall notify that party within five (5) business days of receiving an information request that such a request has been made and the details thereof. The Organisation shall allow five (5) business days to consult with and, to the extent permitted by law, take into account any representations made by the party concerned before such information is disclosed to the requestor and shall on request provide an update of the status of the Organisation's response and the information which it is intending to disclose

5.3 The parties acknowledge that the information contained or listed in Schedule 3 to this Agreement is information which the parties reasonably consider is exempt from disclosure under the Freedom of Information Act 2000 on the basis that it is confidential and/or commercially sensitive information, which if disclosed without the prior consent of the party to which the information relates, would, or would be likely to prejudice the commercial interests of that party.

6. GENERAL

6.1 The Organisation shall be responsible for ensuring that the Exploiting Party complies with this Agreement, including where the Exploiting Party is its Technology Transfer Group.

- 6.2 This Agreement shall take effect from whichever is the earlier of the date of last signature of this Agreement or the date that exploitation takes place, and shall terminate on whichever is the later of the expiry of any patent issued in respect of the Wellcome-funded IP or when all revenues due in respect of exploitation of the Wellcome-funded IP have been distributed to the parties in accordance with the provisions herein. Alternatively this Agreement shall be terminable by mutual agreement of all the parties.
- 6.3 This Agreement is in addition to the Grant Conditions (as may be amended from time to time), which continue to apply. Should there be any conflict between this Agreement and the Grant Conditions, then this Agreement shall prevail.
- 6.4 Nothing in this Agreement shall give rise to any partnership or the relationship of principal and agent between Wellcome and either of the Organisation or its Technology Transfer Group.
- 6.5 All notices and communications shall be in writing and addressed to the parties at the relevant address stated at the beginning of this Agreement (or such other address as may be notified from time to time in writing).
- 6.6 None of the rights or obligations under this Agreement may be assigned or transferred without the prior written consent of the other parties. This Agreement shall be binding on and enure for the benefit of the successors in title of the parties.
- 6.7 No waiver of any breach or default under this Agreement or any of the terms herein shall be effective unless such waiver is in writing and has been signed by the parties. No waiver of any such breach or default shall constitute a waiver of any other or subsequent breach or default.
- 6.8 If any provisions of this Agreement are held to be invalid, illegal or unenforceable (in whole or in part) such provisions or parts shall to that extent be deemed not to form part of this Agreement but the remainder of this Agreement shall continue in full force and effect.
- 6.9 Each party shall do and execute or arrange for the doing or executing of all acts, documents and things as may be necessary in order to implement this Agreement.
- 6.10 This Agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of this Agreement or its formation) shall be governed by and construed in accordance with the laws of England. The parties irrevocably submit to the exclusive jurisdiction of the Courts of England.

SCHEDULE 1

CONSENT APPLICATION FORM

EXPLOITATION OF WELLCOME-FUNDED IP

Guidelines for completing this form:

- Please complete this form as fully as possible. State 'N/A' where questions do not apply.
- Microsoft Word users can mark check-boxes by right-clicking over them, and selecting **Checked** or **Not Checked** in the **Properties** menu.

A. CONTACT DETAILS *(For person submitting this form)*

Contact name:			
Address:			
Tel:		Email:	
Date:			

B. WELLCOME INNOVATOR AWARD

Investigator:			
Organisation:			
Title of award:			
Innovator award no:		Institution ref no: <i>(If any)</i>	

C.

TECHNOLOGY	
Describe the technology:	
Outline application(s) for the technology:	
Indicate type(s) of IP arising: <i>(Mark as many as apply)</i>	<input type="checkbox"/> Patent <input type="checkbox"/> Materials <input type="checkbox"/> Copyright <input type="checkbox"/> Other <input type="checkbox"/> Know-how <input type="checkbox"/> Database <input type="checkbox"/> Design right <i>(Specify)</i> _____
Were there any other third party funders of the technology?	<input type="checkbox"/> Yes If yes, please attach details of calculation of Wellcome's contribution to the technology. <input type="checkbox"/> No <i>(Identify inventive contributions of inventors and proportionate funding contributions of Wellcome and third parties)</i>

D.

PATENT <i>(If more than one patent, copy this section and complete for each patent)</i>	
Outline patent strategy:	<i>(Briefly indicate patent filing strategy and key territories where protection will be sought)</i>
Inventors:	
Patent title:	

Patent no:	<i>(Provide most recent filing no. e.g. application no, publication no, priority no, or grant no, as relevant)</i>		
Patent type:	<input type="checkbox"/> UK	<input type="checkbox"/> PCT	<input type="checkbox"/> Other <i>(Specify)</i>
	<input type="checkbox"/> European	<input type="checkbox"/> US	
			Priority date: <i>(dd/mm/yy)</i>
Current status:	<input type="checkbox"/> Pending	<input type="checkbox"/> Published	<input type="checkbox"/> Granted
			<input type="checkbox"/> Other <i>(Specify)</i>

E. EXPLOITATION

Who will manage Wellcome-funded IP exploitation:	<input type="checkbox"/> Organisation <input type="checkbox"/> Technology Transfer Group <i>(state name)</i> <small><i>(N.B. Technology Transfer Group must be approved by Trust – see Trust Grant Conditions)</i></small>		
Type of transaction: <i>(Mark as many as apply)</i>	<input type="checkbox"/> Exclusive <input type="checkbox"/> Non-exclusive <input type="checkbox"/> Licence <input type="checkbox"/> Assignment	<input type="checkbox"/> Option <input type="checkbox"/> Start-up <input type="checkbox"/> Non-academic MTA <input type="checkbox"/> Collaboration	<input type="checkbox"/> Other <i>(Give details)</i>
Transaction status:	<input type="checkbox"/> In negotiation <input type="checkbox"/> Agreement(s) finalised	Estimated completion date: <i>(to nearest month if poss.)</i>	Copy of draft agreement(s) attached: <input type="checkbox"/> Yes <input type="checkbox"/> No

Names of party(s):	
Party(s) Business	
Exploitation Strategy	
Income / equity returns expected:	
Annual accounting date:	
Outline IP exploitation safeguards:	

F. PUBLIC BENEFIT

Please describe briefly how the proposed exploitation route will lead to public benefit and the fulfilment of Wellcome's charitable mission

G. Revenue retention to support new translation

Organisations may retain Wellcome's share of the first £500,000 of Cumulative Income due under the Innovator Revenue/Equity-Sharing Agreement in order to apply it to support new translational activities in the area of human health which otherwise would not be funded by the Organisation. Do you wish to retain these funds and use them for this purpose? Please note, if the Organisation selects this option it will be required to report annually on the use of these funds.

Yes No

Please describe briefly how such retained funds will be used to support new translational activities and how these activities will support Wellcome's charitable mission. (Please add a continuation sheet if required)

SCHEDULE 2

AGREEMENT(S) TO BE ENTERED INTO

(Insert copies of relevant proposed agreements here)

Innovator Template

SCHEDULE 3
CONFIDENTIAL INFORMATION

Innovator Template

SIGNED BY the duly authorised representatives of the parties.

Signed for and on behalf of **THE WELLCOME TRUST LIMITED** as trustee of the **WELLCOME TRUST**:

Signed: _____
Name: _____
Title: _____
Date: _____

Signed for and on behalf of **[ORGANISATION]** by:

[Signed for and on behalf of **[TECHNOLOGY TRANSFER GROUP]** by:

Signed: _____
Name: _____
Title: [Secretary of Organisation/Finance Officer]
Date: _____

[Managing Director/Head]
