

## Summary of current terms and conditions

An outline of the current standard terms and conditions for Action on Hearing Loss Fellowship grants is given below where Action on Hearing Loss as referred to as “we”, “us” or “our” while the Institute administering the grant, the Grantee, is referred to as “you”, “your” or “yours. Clauses within [ ] are optional and will be removed or left in as appropriate.

**THIS AGREEMENT** is made on

20 [xx]

### **BETWEEN:**

1. **THE ROYAL NATIONAL INSTITUTE FOR DEAF PEOPLE, TRADING AS ACTION ON HEARING LOSS**, registered in England as a charity with registered numbers 207720 (England and Wales) and SC038926 (Scotland) and a company registered under number 454169, having its registered office at Brightfield Business Hub, Bakewell Road, Orton Southgate, Peterborough, PE2 6XU (“**Action on Hearing Loss**”); and
2. **Full registered name of institution administering Grant** registered in **Jurisdiction/Country** with registration number [**registration number (i.e. registered company or charity number, or Royal Charter number)**] and having its registered office at **registered address** (the “**Grantee**”, “**You**” or “**Your**”

each a “**Party**” and together the “**Parties**”.

### **WHEREAS**

- A. After considering the Grantee’s Application, Action on Hearing Loss (to be referred to as “**we**”, “**us**”, or “**our**”) shall offer **full name of contracting entity of the Grantee** a Fellowship Grant (the “**Grant**”) subject to the terms and conditions contained in this grant offer and agreement (“**Agreement**”). Upon signature by the parties of this Agreement, we will confirm details of how the Grant will be paid to you, subject to the terms and conditions of this Agreement.
- B. As a requirement of the Grant, in return for support of the Research, a proportion of all Net Income and/or Equity arising from the Exploitation of any Grant Funded IP must be shared with Action on Hearing Loss in accordance with the terms of this Agreement.
- C. Action on Hearing Loss intends to use amounts received in respect of such Net Income and Equity to further its own charitable purposes and goals.
- D. Action on Hearing Loss does not intend to acquire ownership of any Grant Funded IP under this Agreement.

## E. DETAILS OF THE GRANT AWARD & DEFINITIONS

<b>Application:</b>	The grant application submitted to us and attached to this Agreement at Annex 1, describing the Research and upon which the decision to award the Grant was made.
<b>Grant Holder(s):</b>	Name(s) of applicant(s), (means the individual(s) (i.e. scientist, researcher) named in the Grant application as Applicant 1, in Annex 1 and who is/are responsible for delivering the research project described in Annex 1).
<b>Grant Amount:</b>	A sum not exceeding amount of Grant in figures (amount of Grant in text).
<b>Research:</b>	The research project described in the Application, to be carried out in accordance with this Agreement and the requirements set out in Annex 2.
<b>Start Date:</b>	Date project starts
<b>End Date:</b>	Date project ends
<b>Grant Period:</b>	From the Start Date to the End Date.
<b>Territory:</b>	Name of the country/countries in which the Research will be conducted

NOW THEREFORE, in consideration of the foregoing and the terms of this Agreement, the Parties hereby agree as follows:

### 1. ADDITIONAL DEFINITIONS AND INTERPRETATION

- 1.1 **'Annual Accounting Date'** means the date from which Exploitation commences, or otherwise agreed between the parties.
- 1.2 **'Applicable Laws'** means (for so long as and to the extent that they apply) the law of the European Union, the law of any member state of the European Union and/or UK Data Protection Legislation and any other law that applies in the UK
- 1.3 **'ASPA'** means the Animals (Scientific Procedures) Act 1986 and any subordinate

legislation made under, or any amendments made to, that Act from time to time, together with any guidance or codes of practice issued by the relevant government department concerning the legislation. **'Business Days'** means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for general business.

- 1.4 **'Data Controller'** means the person (s) or entity (ies) who determine the purposes and means of processing personal data.
- 1.5 **'Data Protection Legislation'** means UK Data Protection Legislation in force, including the Data Protection Act 2018, and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Legislation (*EU/2016/679*), and any other directly applicable European Union regulation relating to privacy in force.
- 1.6 **'Direct Costs'** means all reasonable patent and legal costs and other incidental expenses that are incurred directly in connection with the Exploitation.
- 1.7 **'Equity'** means all equity or any other interest (including but not limited to, debentures, warrants, securities or otherwise) received by you in consideration for the Exploitation of Grant Funded IP.
- 1.8 **'Equity Share', or 'Equity Sharing'** means the division of all Equity received, or due in respect of Exploitation of the Grant Funded IP, to be shared as set out in this Agreement.
- 1.9 **'Exploitation'** means the Exploitation of any Grant Funded IP that is principally described and set out in the Notification Form.
- 1.10 **'Exploit' or 'Exploited'** means any commercialisation or Exploitation of any intellectual property and/or Grant Funded IP (or any combination thereof), including but not limited to, any commercialisation or Exploitation such as in the form of licensing, assignment, options, sale of goods and/or services, any form of benefits in kind, research collaboration, or any other agreement for cash and/or Equity consideration.
- 1.11 **'Exploiting Party'** means whichever of the Grantee or Technology Transfer Group (if any) as applicable will be responsible for the Exploitation of the Grant Funded IP for and on behalf of the Grantee.
- 1.12 **'Grant'** means the grant provided by Action on Hearing Loss to the Grantee to support the Research, details of which are set out in this Agreement.
- 1.13 **'Grantee'** means the institution administering the Grant.
- 1.14 **'Grant Funded IP'** means any and all Intellectual Property which is or has been created, exemplified or developed (whether in whole or in part) during the Research or which has resulted from the Research, whether on its own or where combined and used in conjunction with the results of the Research, whether patentable or not, together with any improvements thereto, whether or not any of the Grant funds are used before or after an invention disclosure or patent filing, and whether or not any person in receipt of Grant funding or working on Grant funded activity is named in invention disclosure records.
- 1.15 **'Gross Income'** means all cash sums or other monetary consideration actually received in respect of the Exploitation, including licence, signing and option fees, royalties, and

milestones, but excludes any Equity or other interests and the Grant or other monies paid specifically to fund the Research.

- 1.16 **'Intellectual Property'** means any and all rights in inventions, discoveries, results of research, materials, technologies, products, data, algorithms, software, confidential information, know-how and trade secrets, prototypes, patents (including without limitation, composition of matter patents), utility models, databases, copyright, trademarks, service marks, design rights, applications for any of the foregoing, moral rights, and any other intellectual property rights in each case whether or not registered, or capable of registration, including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future, anywhere in the world.
- 1.17 **'Milestones'** means all material Research milestones specified within the Application.
- 1.18 **'Net Income'** means Gross Income less
- (i) Direct Costs; and
  - (ii) any applicable taxes.
- 1.19 **'Notification Form'** means the form provided by the Exploiting Party to Action on Hearing Loss (Annex 3), detailing all notifications, including the scope and remit of any intended or actual Exploitation of Grant Funded IP by the Exploiting Party, its agents and/or representatives to which the terms and conditions of this Agreement shall apply.
- 1.20 **'Participation Round'** means each round of fundraising by a company, principally in which Equity (or its equivalent) is issued, taking place following the date of this Agreement.
- 1.21 **'Reporting Facility'** means a reporting facility and access *via* an online platform (currently, *ResearchFish*) to be the designated location for submitting progress reports in relation to the Research.
- 1.22 **'Research Manager'** means the individual who has been nominated to represent us for the purposes of this Agreement.
- 1.23 **'Revenue'** means all cash sums, or any other monetary consideration received, or due in respect of Exploitation of the Grant Funded IP, including but not limited to, licensing, signing fees and option fees, royalties, and milestones.
- 1.24 **'Revenue Share', or 'Revenue Sharing'** means the division of any and all cash sums or any other monetary consideration received, or due in respect of Exploitation of the Grant Funded IP, to be shared as set out in this Agreement.
- 1.25 **'Technology Transfer Group'** means, if applicable, the body which is responsible for providing technology transfer services to the Grantee and to carry out Exploitation activities with respect to the Grant Funded IP.
- 1.26 The Annexes form an integral part of this Agreement and have effect as if set out in full in the body of this Agreement. A reference to this Agreement includes Annexes.

- 1.27 Capitalised terms in this Agreement shall be interpreted in accordance with the definitions as set out above.
- 1.28 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.29 References to any Party shall include that Party's personal representatives, successors and permitted assigns.
- 1.30 A reference to a statute or statutory provision (including secondary legislation) as from time to time in force, is also a reference to it as amended, extended or re-enacted legislation.
- 1.31 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2 Research practice and obligations**

- 2.1 You shall use the Grant exclusively for the delivery of the Research to be carried out in the Territory and in accordance with this Agreement (including without limitation the budget detailed in your Application) together with any other reasonable requirements notified to you by us from time to time. The Grant shall not be used for any other purpose without our prior written agreement.
- 2.2 You shall not make any significant change to the Research without our prior written agreement. You shall notify us immediately if any change to the Research is made without our prior written agreement, including without limitation any significant divergence from the original aims and directions of the Research.
- 2.3 You shall ensure that the Grant Holders conduct and manage the Research, and that they do so in accordance with the Application and this Agreement, including without limitation Annex 2 hereto, and you shall notify us immediately if any of the Grant Holders significantly reduce or cease their involvement in the Research.
- 2.4 You agree and accept that you shall not apply for duplicate funding in respect of any part of the Research or any related administration costs that we are funding in full under this Agreement.
- 2.5 You warrant, undertake and represent that:
- 2.5.1 you have all necessary resources and expertise to deliver the Research (assuming due receipt of the Grant);
  - 2.5.2 you have not committed, nor shall commit, any act prohibited by this Agreement, including (but not limited to) acts of bribery or corruption as applicable in the UK or in each Territory;
  - 2.5.3 you shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify us immediately of any significant departure from such legislation, codes or recommendations;

- 2.5.4 you shall comply with all legislation, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Research;
  - 2.5.5 you shall ensure that the conduct of the Research, as well as the protection and Exploitation of any Grant Funded IP, does not infringe any third party Intellectual Property Rights;
  - 2.5.6 you have and shall keep in place adequate procedures for dealing with any conflicts of interest;
  - 2.5.7 you have and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
  - 2.5.8 all financial and other information concerning you which has been disclosed to us is true and accurate;
  - 2.5.9 you have taken all necessary action and have all requisite power and authority to enter into and perform this Agreement in accordance with the terms therein;
  - 2.5.10 this Agreement constitutes (or shall constitute when executed) valid, legal, binding and enforceable obligations upon you in the terms therein;
  - 2.5.11 you are not subject to, and shall not enter into, any contractual or other restriction imposed by your own or any other organisation's rules or regulations or otherwise which may prevent or materially impede you from meeting your obligations in connection with the Grant;
  - 2.5.12 you are not aware of anything in your own affairs which you have not disclosed to us, which might reasonably have influenced our decision to make the Grant on the terms contained in this Agreement;
  - 2.5.13 since the date of your last accounts there has been no material change in your financial position or prospects; and
  - 2.5.14 all animals involved in the Research shall be used in accordance with the relevant laws applicable in each Territory and the requirements stated in Annex 2, which must provide a standard of use at least equivalent to the standards set out in the codes of practice issued under ASPA (as detailed in Annex 2).
- 2.6 For the avoidance of doubt, unless first approved by us in writing, you shall not use the Grant to:
- 2.6.1 purchase buildings or land;
  - 2.6.2 pay any of your indirect costs, including without limitation your overheads notwithstanding that any of those overheads may relate to facilities where the Research is conducted; or

- 2.6.3 pay for any of your expenditure commitments entered into before the commencement date of this Agreement.
- 2.7 The Grant will be paid in four (4) instalments during the Grant Period. Unless agreed with us in writing in advance, all payments of the Grant must be spent within the following periods (each a “**Payment Period**”):
- 2.7.1 the first payment of the Grant, and each alternate payment thereafter, must be spent within twelve (12) months of receipt by you of that payment;
  - 2.7.2 the second Grant payment, and each alternate payment thereafter, must be spent within six(6) months of receipt by you of that payment; and
  - 2.7.3 except, for the final payment of the Grant, which must be spent by the end of the Grant Period (if this final payment of the Grant falls before the end of the relevant Payment Period), you shall not spend any part of the Grant after the end of the Grant Period without our prior written permission.
- 2.8 Should any part of the Grant remain unspent or is likely to remain unspent by the end of the relevant Payment Period or, in the case of the final payment, the end of the Grant Period, you must notify us in writing immediately. We will have sole discretion to decide whether any unspent part of the Grant must be returned to us, or may be retained by you to be spent on the Research.
- 2.9 The Grant is only payable to you and, except as contemplated as part of the Research by being set out in the Application or as payment for goods or services required by the Research, you shall not, and shall not allow, any part of the Grant to be passed to any third party for any reason, without our prior written permission.
- 2.10 Any liabilities arising at the end of the Grant Period including any redundancy liabilities for staff employed by you to deliver the Research must be managed and paid for by you using other resources available to you. There will be no additional funding available from us for this purpose.

### **3 Grant Payment**

- 3.1 Subject to the provisions of this clause 3, the Grant will be paid in biannual instalments during the Grant Period following execution and completion of this Agreement. The first payment will be made on or before the Start Date, or once a counter-signed copy of this Agreement is received by us, whichever is later. You agree and accept that payments of the Grant will only be made subject to satisfactory progress being made on the Research, which is determined by us in our absolute discretion, and for use for proper expenditure in the delivery of the Research in accordance with clause 2 above.
- 3.2 The amount of the Grant shall not be increased in the event of any overspend by you in your delivery of the Research.
- 3.3 Payments will be made in UK Pounds Sterling and the sums paid over to you will be inclusive of any currency conversion fees that may be incurred.

- 3.4 You shall promptly repay to us any money incorrectly paid to you either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Grant monies have been paid in error before all conditions attaching to the Grant have been complied with by you.
- 3.5 Our intention is that the Grant will be paid to you in full. However, without prejudice to our other rights and remedies, we may at our discretion withhold or suspend payment of the Grant if:
- 3.5.1 we consider that you have not made satisfactory progress with the delivery of the Research, to be determined by us in our absolute discretion;
  - 3.5.2 one of the Grant Holders ceases to be involved in the conduct or management of the Research;
  - 3.5.3 you are, in our reasonable opinion, delivering the Research in a negligent manner;
  - 3.5.4 you obtain funding from a third party which, in our reasonable opinion, undertakes activities that are likely to bring the reputation of the Research or us into disrepute;
  - 3.5.5 you provide us with any materially misleading or inaccurate information;
  - 3.5.6 you breach any applicable laws, codes or other regulations in the UK and/or the Territory;
  - 3.5.7 any of your employees, sub-contractors, agents or volunteers has: (i) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Research; or (ii) taken any actions which, in our reasonable opinion, bring or are likely to bring our name or reputation into disrepute;
  - 3.5.8 we are, at any time during the Grant Period, no longer satisfied that the Research is in keeping with our charitable objectives following any significant divergence from the Research as set out in the Application;
  - 3.5.9 you cease to operate for any reason, or pass a resolution (or any court of competent jurisdiction makes an order) that you shall be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
  - 3.5.10 you become insolvent, or are declared bankrupt, or are placed into receivership, administration or liquidation, or a petition has been presented for your winding up, or you enter into any arrangement or composition for the benefit of your creditors, or you are unable to pay your debts as they fall due; or
  - 3.5.11 you fail to comply with any of the terms and conditions set out in this Agreement and fail to rectify any such failure within thirty (30) days of receiving written notice detailing the failure.



- 3.6 Without prejudice to our other rights and remedies, we may withhold any further payments of the Grant and, at our discretion, require repayment of all or part of the Grant if:
- 3.6.1 you use any part of the Grant for purposes other than those for which the Grant has been awarded;
  - 3.6.2 the undertaking of the Research does not start within six (6) months of the Start Date and you have failed to provide, to our satisfaction, a reasonable explanation for the delay; or
  - 3.6.3 you obtain duplicate funding from a third party for the Research.
- 3.7 We may retain or set off any sums owed to us by you which have fallen due and payable against any sums due to you under this Agreement or any other agreement pursuant to which you provide goods or services to us.
- 3.8 Should you be subject to financial or other difficulties which are capable of having a material impact on the effective delivery of the Research or your compliance with this Agreement, you will notify us as soon as possible so that, if possible, and without creating any legal obligation, we will have an opportunity to provide assistance in resolving the problem or to take action to protect us and the Grant monies.
- 3.9 The Grant shall be shown in your accounts as a restricted fund and shall not be included under general funds. You shall acknowledge the Grant in your annual report and accounts, including an acknowledgement of us as the source of the Grant.
- 3.10 You shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Grant monies received by you, together with details of invoices, receipts and accounts and any other relevant documents relating to the expenditure of the Grant for a period of at least six (6) years following receipt of any Grant monies to which they relate. We shall have the right to review, at our reasonable request, your accounts and records that relate to the expenditure of the Grant and shall have the right to take copies of such accounts and records.
- 3.11 On each anniversary of the Start Date during the Grant Period, and within two months of the End Date, you must send to us a signed report detailing all Grant income and expenditure.
- 3.12 If required, you will send us upon request two copies of your most recently audited accounts.

#### **4 Dissemination and publicity**

- 4.1 Following appropriate protection of Intellectual Property rights (in accordance with clause 6 below), you shall ensure that all Research outcomes are published in an appropriate form, which shall be at least one paper in a peer-reviewed journal. You shall promptly notify us in writing each time a paper referring to the Research is accepted for publishing by any journal or any other publisher.
- 4.2 Dissemination of the Research results may be reasonably delayed to enable protection of Intellectual Property, in accordance with clause 6. If such delay occurs, you shall notify us in writing.

- 4.3 You shall ensure that electronic copies of any publications of the Research are made available through PubMed Central (PMC) or Europe PubMed Central (Europe PMC), as soon as possible and in any event within six (6) months of the journal publisher's official date of final publication.
- 4.4 If you do not publish the findings of the Research to our reasonable satisfaction, then we will have the right, but not the duty, to make or arrange for such publication. This right will only be exercised six (6) months after we give you written notice that you are failing to publish the Research findings to our satisfaction.
- 4.5 You shall acknowledge our support in any materials that refer to the Research and in any written or spoken public presentations about the Research. Such acknowledgements shall include our name and logo (or any future name or logo adopted by us) using the templates provided by us from time to time. In using our name and logo, you shall comply with all reasonable branding guidelines issued by us from time to time.
- 4.6 You agree to participate in and co-operate with promotional activities relating to the Research that may be instigated and/or organised by us and shall comply with all reasonable requests from us to facilitate visits, provide reports, statistics, photographs and case studies that will assist us in our promotional and fundraising activities relating to the Research.
- 4.7 You grant us the right to use any information, other than any information that you have specifically identified as being confidential, which is provided in the Application, the reports submitted pursuant to this Agreement, or otherwise provided by you to us, for any of our promotional and fundraising activities. Such activities may include, without limitation, creating summaries for use on our website, in fundraising appeals or reports to donors, or writing articles in our membership magazine.
- 4.8 We shall consult you prior to issuing any statement to the press about the Grant or the Research.
- 4.9 You must obtain our written approval of any press statements about the Grant or the results of the Research prior to them being issued.

## **5 Reporting, Auditing and Research progress**

- 5.1 Throughout the Grant Period, you will submit progress reports to us as requested, *via* the Reporting Facility (such reports to be provided not less than annually). These reports will require detail and specific identification of the following matters:
  - 5.1.1 all successes and failures in relation to any benchmarks set out in the Application; and
  - 5.1.2 if applicable, any circumstances which may prevent the Research from being completed within the Grant Period or which may cause the Research to continue in any way that deviates materially from the Application.

If you are unable, for whatever reason, to submit a report via the Reporting Facility, you will promptly notify us and will comply with any alternative submission arrangements as directed by us.

- 5.2 Throughout the Grant Period you will also provide, promptly upon our request, accurate written reports on the progress of the Research in accordance with our specification, to be submitted directly to us. You shall also promptly upon request provide us with such further information, explanations and documents including giving us a right of audit of any Research and Exploitation materials as we may reasonably require (not to be unreasonably withheld by the Grantee) in order for us to establish if the Grant has been used exclusively and accurately in accordance with this Agreement. And, if in our reasonable opinion the audit reveals any material discrepancies caused by the Grantee (and/or its agents) then all professional costs of the audit shall be incurred wholly by the Grantee.
- 5.3 You will permit both us and our authorised representatives by prior appointment upon reasonable notice to visit the facilities at which the Research is being conducted and to observe the Research, for the purpose of discussing, monitoring and evaluating your fulfilment of the conditions of this Agreement.
- 5.4 Within three (3) months of the End Date, you will provide a comprehensive report in accordance with our specification, detailing all outcomes of the Research, which you shall submit to us through the Reporting Facility. You shall also provide directly to us a separate written report in accordance with our specification, containing narrative detail of the Research outcomes.
- 5.5 You shall ensure that all Milestones are met within a reasonable period relative to the timetable set out in the Application, and you must notify us as soon as you become aware that a Milestone is unlikely to be met. If a Milestone cannot be re-negotiated between you and us within thirty (30) days of your notification, or such longer period as may be agreed in writing between the parties, we have the right to stop making payments of the Grant and to terminate this Agreement immediately upon written notice.
- 5.6 You shall closely monitor the delivery and success of the Research throughout the Grant Period to ensure that the aims and objectives of the Research are being met and that this Agreement is being adhered to.
- 5.7 Upon our request, you will provide a submission upon the progress of the Research and the Research outcomes following the end of the Grant Period, via the Reporting Facility, upon the one (1) year, three (3) year and five (5) year anniversaries of the Grant Period, then each and every two year cycle thereafter, for as long as the grant is generating relevant outputs. This obligation shall continue after the expiry or termination of this Agreement, for any reason.

## **6 Intellectual property**

- 6.1 You and we agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, know-how and any other Intellectual Property whatsoever owned by either us or you before the Start Date or developed by either party to this Agreement during the Grant Period, shall remain the property of that party.
- 6.2 Where we have provided our name and logo for use by you in accordance with this Agreement, you shall immediately upon our request at any time cease to use our name and logo.

- 6.3 You agree to promptly disclose to us in writing all Grant Funded IP. You shall provide a copy of any Grant Funded IP to us immediately in writing and by completing as much information as possible at this stage in the Notification Form as set out in Annex 3.
- 6.4 Should any Grant Funded IP be created, then we require you to consider whether the protection and Exploitation of such Grant Funded IP is appropriate under the circumstances. You shall use all reasonable endeavours to protect and Exploit all Grant Funded IP that you are lawfully entitled to protect and Exploit **and** notify us promptly in writing by completing the Notification form set out in Annex 3 of any exploitation, including without limitation taking any steps to make any commercial use of, or grant to any third party any Exploitation rights over, such Grant Funded IP.
- 6.5 You agree to share with us all Revenue, based upon Revenue Sharing as set out as set out in this Agreement, and where arising, any Equity received by you, or any third party on your behalf, from the commercialisation or Exploitation of Grant Funded IP, and as referenced in clause 8.
- 6.6 Where any Grant Funded IP is owned jointly or in common by the Grantee with one or more third parties and any such third party owner requests the consent of the Grantee to the Exploitation or commercialisation in any way by that third party of that Grant Funded IP, the Grantee shall not grant its consent without first notifying Action on Hearing Loss by completing and returning the Notification Form to us.
- 6.7 If you do not carry out, manage, protect or Exploit any Grant Funded IP, or arrange a third party to do so on your behalf to our reasonable satisfaction, then we shall have an implied right provided by you, granting us a licence in perpetuity to Exploit any such Grant Funded IP in any territory (and sub-licence(s) for the same) but not the obligation to do so. Moreover, you shall do all things as necessary to carry out, manage or facilitate our protection or Exploitation of such Grant Funded IP and you shall provide us, upon our request, with all reasonable assistance and provide all necessary consents in writing in connection with our exercise of this contractual right. This right will only be exercised six (6) months after we have given you written notice that you failed to protect, manage or Exploit such Grant Funded IP to our reasonable satisfaction.

## **7. Monitoring Grant Funded IP**

- 7.1 With respect to the Exploitation and, in accordance with clause 6, the Exploiting Party must promptly provide us as and when they arise:
- 7.1.1 copies of any signed agreements entered into; and
  - 7.1.2 details of any registration process of Grant Funded IP applications, grants and abandonments (including title, filing number and date);
  - 7.1.3 deliver to us at least annually a report detailing all Exploitation activities and such other information as we may reasonably require in relation to the Exploitation activities for the preceding Accounting Period; and

7.1.4 upon request, arrange and hold update meetings with us at least once every six (6) months, or at such other intervals as may be otherwise agreed with us.

## 8. Revenue Sharing

8.1 The Exploiting Party shall, annually and in accordance with clause 9, share all Net Income and Equity received in respect of the Exploitation and in accordance with clauses 8.2 and 8.3, below.

### 8.2 *Income Sharing*

Where Gross Income is received then the Exploiting Party shall:

- 8.2.1 receive and account for Gross Income due;
- 8.2.2 deduct and reimburse as appropriate any and all Direct Costs and any applicable taxes; and
- 8.2.3 distribute all Net Income received in the following shares:

<b>Grantee and Technology Transfer Group</b>	<b>Action on Hearing Loss</b>
50% (fifty per cent)	50% (fifty per cent)

### 8.3 *Equity Sharing*

8.3.1 Where rights to take Equity are received then the Exploiting Party shall:

(a) share any Equity received in the following proportions:

<b>Grantee and Technology Transfer Group</b>	<b>Action on Hearing Loss</b>
50% (fifty per cent)	50% (fifty per cent)

(b) 100% will be held by the Grantee of which 50% shall be held on trust for Action on Hearing Loss.

8.3.2 Upon communication by the Grantee of a pro-rated equity disposal, Action on Hearing Loss shall receive the equivalent pro-rated amount (i.e. up to 50%) of the proceeds of an equity sale, or of Action on Hearing Loss shall prefer, request in writing within fourteen days of written notification of the proposed equity sale, to receive in lieu a pro-rated equity stake (i.e. the residual amount up to 50% of remaining shares) or, a mix of proceeds of sale and equity amounts at its sole discretion.

- 8.3.3 For the avoidance of doubt, the Exploiting Party shall use its best endeavours to procure that we are entitled to become a party to all contracts necessary to give effect to our rights under this clause.
- 8.4 If the Grant (together with any of our other funds) is not the sole source of funding for the activities from which the Grant Funded IP arose, then:
- 8.4.1 all Net Income and Equity received in respect of the Exploitation shall be pro-rata calculated and adjusted to allocate to us and any third party funders, as appropriate, shares of the Net Income and Equity which are proportionate to each of those parties' total funding of the activities from which the Grant Funded IP arose; and
- 8.4.2 the Net Income and Equity sharing provisions set out in clauses 8.2 and 8.3 above, shall apply to the portion of Net Income or Equity attributed, pursuant to this clause 8.4, to our total funding contribution, so that this portion is shared between Action on ourselves and the Grantee and, if applicable, Technology Transfer Group.
- 8.5 For the avoidance of doubt, the Grantee shall be responsible for rewarding the inventors of the Grant Funded IP who are its staff or students from the Grantee's share of Net Income and/or Equity due to it, in accordance with its own policies and codes of practice.
- 8.6 Notwithstanding the terms of this clause 8, the Grantee and its Technology Transfer Group shall be free to agree how to share between themselves the shares of Net Income and/or Equity due to either or both of them under this Agreement.

## **9 Revenue and Equity (Accounting, Reporting and Payments)**

- 9.1 If the Grant Funded IP is Exploited, within three (3) months following each Annual Accounting Date, the Exploiting Party shall provide us a statement or statements setting out financial information about the Exploitation for the preceding 12 (twelve) month period ending on such Annual Accounting Date (an "**Accounting Period**"), including Gross Income, Net Income, Direct Costs, Equity, revenue shares and applicable taxes. All such statements shall include a breakdown of the calculations on which the amounts stated therein were determined.
- 9.2 The Exploiting Party shall pay us, or to any third party specified by us, the shares of Net Income due to us pursuant to this Agreement in respect of such statements within 14 (fourteen) days of receipt of the proper invoice(s).
- 9.3 The Exploiting Party shall complete all actions required of it to ensure that the shares of Equity due to us pursuant to this Agreement, in respect of such statements, become owned by us, or any third party specified by us, within 6 (six) months of the end of the relevant Accounting Period.
- 9.4 The Exploiting Party shall keep true and detailed records and accounts of all proceeds received by it in connection with the Exploitation, and we shall have the right to audit these in accordance with standard UK accounting practice on request. The Exploiting Party shall provide us with copies of such records and accounts, and other supporting financial documentation reasonably requested by us, promptly upon request.

- 9.5 Late payments shall be subject to interest payable on demand at the rate of four (4) 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.
- 9.6 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.

## 10 Warranties and Liabilities

- 10.1 To the fullest extent permitted by law, Action on Hearing Loss accept no liability for any and all consequential loss, whether direct or indirect, including but not limited to the delivery and outcome of any Research, the application and use of the Grant, or from any withdrawal of the Grant, howsoever caused.
- 10.2 Nothing in this Agreement limits or excludes either party's liability for:
- 10.2.1 death or personal injury caused by the negligence of a party;
  - 10.2.2 any fraud; or
  - 10.2.3 any sort of liability that, by law, cannot be limited or excluded.
- 10.3 You warrant that you have taken all necessary actions to obtain all required authority to enter into and perform all such duties and actions herein, and that you will use your best endeavours to carry out all such duties and actions in accordance with this Agreement.
- 10.4 You warrant and indemnify us against any overdue Revenue payments to us under this Agreement, howsoever caused.
- 10.5 You shall indemnify us and our employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs (including all legal and professional costs), expenses, losses, damages and all other liabilities arising from or incurred by reason of:
- 10.5.1 your breach of applicable laws, regulations, codes of conduct or other guidance from authorities in relation to the Research, including (but not limited to) failure to obtain the licenses and consents required for the Research and/or a breach of the provisions in Annex 2;
  - 10.5.2 breach of any third party Intellectual Property rights, particularly those in connection with the Research or any use of Grant Funded IP;
  - 10.5.3 your acts or omissions which lead to any damage, or potential damage, to our reputation, name or logo; and
  - 10.5.4 our potential or actual loss of Revenue and/or Equity share in respect of the commercialisation of or other use of any Grant Funded IP

The provision of this clause 10 shall survive termination of this Agreement for any reason whatsoever.

## 11 Data Protection

- 11.1 We will comply with all applicable requirements of the Data Protection Legislation. In this clause 11, Applicable Laws means (for so long as and to the extent that they apply) the law of the European Union, the law of any member state of the European Union and/or UK Data Protection Legislation and any other law that applies in the UK.
- 11.2 We will require personal data to be made available to us by you. The nature, purpose, type of personal data and categories of data subjects required to be made available to, and processed by us from you can be found in Annex 4 to this Agreement. Both the parties record their intention that we shall be the Data Controller and in any such case:
- 11.2.1 You acknowledge and agree that the personal data may be transferred or stored outside the EEA or EU or the country where they are located in order to carry out processing for the purposes outlined in Annex 4. Where such personal data is transferred or stored outside the EEA or EU, we will ensure that any transfer of data outside the EEA or EU is undertaken using legally compliant transfer mechanisms including but not limited to standard contractual clauses or binding Corporate Rules under Article 46.2 of the GDPR adopted by the EU Commission to protect the privacy and security of the personal data or other legally compliant transfer mechanisms under GDPR.
  - 11.2.2 You shall ensure that you are entitled to transfer the relevant personal data to us so that we may lawfully use, process and transfer the personal data in accordance with this agreement;
  - 11.2.3 We will ensure that we process the relevant personal data strictly in accordance with the purposes outlined in Annex 4;
  - 11.2.4 We shall maintain a record of all categories of processing activities carried out to fulfil the purposes outlined in Annex 4 in accordance with data protection legislation and shall make this record available to you if requested;
  - 11.2.5 We shall ensure that the Grant Holders have been informed of, and where appropriate have given their consent to, such use, processing, and transfer of their personal data as required by all applicable data protection legislation;
  - 11.2.6 We shall take appropriate technical and organisational measures to ensure an appropriate level of security, taking into account the nature, scope, context and purposes of the processing.
  - 11.2.7 We shall ensure that only such of our employees who may be required by us to assist in processing the personal data in accordance with the



purposes outlined in Annex 4 shall have access to the personal data and that all such employees will have undergone training in the law of data protection, their duty of confidentiality under contract and in the care, security and handling of personal data;

11.2.8 We are permitted to sub-contract any of the processing, to our third party contractors and the same data protection obligations as set out in this Agreement shall be imposed on that other processor by way of a contract or other legal act; and

11.2.9 We will notify your Data Protection Officer within 72 hours of becoming aware of any incidents threatening to breach or breaching the confidentiality, integrity or availability of any of the personal data processed as a result of this Agreement.

## 12 Term and Termination

12.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement and shall terminate for the Grant terms at either:

12.1.1 the expiry of the Grant Period; or

12.1.2 for so long as any Grant monies remain unspent by you, whichever is longer, except for any obligations under this Agreement which remain in force following expiry or termination of this Agreement for any reason which shall continue until such obligations have been completed, or

12.1.3 when all Net Income and Equity due pursuant to this Agreement in respect of the Exploitation, from time to time, has been fully distributed to the Parties in accordance with the provisions herein or by written agreement of all the Parties.

12.2 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

12.3 We may terminate this Agreement and any Grant payments on giving you thirty (30) days' prior written notice should we be required to do so for any reason.

12.4 Either party may terminate this Agreement, with immediate effect on providing thirty (30) days' prior written notice, if the other party has committed a material breach of the Agreement and if such material breach has not been remedied during the notice period.

12.5 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination for any reason or expiry of this Agreement shall remain in full force and effect. Any rights and remedies accrued under this Agreement will not be affected by the termination of this Agreement, nor shall termination of this Agreement affect any Revenue and Equity Sharing Terms in place between you and us.

**13 Variation**

No amendments to this Agreement will be effective or enforceable unless agreed by us and evidenced in writing.

**14 Assignment**

Other than as set out in this Agreement, you may not without Action on Hearing Loss' prior written consent assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement (including but not limited to, any form of revenue sharing and/or equity arrangement) or transfer or pay to any other person or entity any part or whole of the Grant and/or Revenue.

**15 Contracting status**

15.1 Where the Grantee is neither a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Agreement on behalf of the Grantee shall be jointly and severally liable for the Grantee's obligations and liabilities arising under this Agreement.

15.2 This Agreement shall not create any partnership or joint venture between us and you, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

**16 Waiver and Severance**

16.1 No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy nor shall it preclude or restrict any further exercise of that right or remedy or any other. No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy. A waiver of any right under this Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default.

16.2 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

**17 Entire Agreement**

This Agreement sets out the entire agreement of the parties and supersedes all prior agreements and understandings relating to its subject matter.

## 18 **Third parties**

- 18.1 Any staff recruited by you in connection with the Research are your employees and you shall be solely responsible for them and for any costs, taxes and liabilities arising under any present or future employment law or regulations.
- 18.2 This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

## 19 **Insurance**

You shall effect, maintain and make available upon request, insurance with a reputable insurance company a certified policy or set of policies, providing limits of cover of an appropriate level for the Research (but insurance cover that is no less than one million pounds per incident), in respect of all risks which may be incurred by you, arising out of your performance of the Agreement, including death or personal injury, loss of or damage to property, breach of third party intellectual property rights or any other loss. You shall (on request) supply to us a copy of all such insurance policies.

## 20 **Dispute Resolution**

- 20.1 In the event of any complaint or dispute (including any dispute concerning our right to withhold funds or terminate) arising between the parties to this Agreement in relation to this Agreement the matter should first be referred for resolution to the Research Manager or any other individual nominated by us from time to time.
- 20.2 Should the complaint or dispute remain unresolved within fourteen (14) days of the matter first being referred to the Research Manager or other nominated individual, as the case may be, either party to this Agreement may refer the matter to the Executive Director of Research of Action on Hearing Loss and a senior member of staff nominated by you for this purpose, with an instruction to attempt to resolve the dispute by agreement within twenty-eight (28) days, or such other period as may be mutually agreed by you and us.
- 20.3 In the absence of a resolution of the complaint or dispute, the parties may seek to resolve the matter through mediation under the CEDR UK Model Mediation Procedure. Unless otherwise agreed in writing, the parties shall bear the costs and expenses of the mediation equally.

## 21. **Notices**

All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, emailed, or mailed (by first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered or if emailed all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing. For the purpose of this clause, "working day" means any day that is not a Saturday or a Sunday or a day on which the Bank of England is closed for business.

22. **Counterparts**

This Agreement may be executed simultaneously in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

23. **Governing law**

Without prejudice to your obligations to comply with the laws and regulations of each Territory, the terms of this Agreement will be interpreted in accordance with the laws of England, and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

**ANNEX 1**  
**APPLICATION**

## ANNEX 2

### RESEARCH

1. The Research must be conducted in accordance with the Application attached as Annex 1 of this Agreement, the requirements set out below and the terms and conditions of this Agreement, and in accordance with any other reasonable requirements notified to you by us from time to time.
2. You shall ensure that the Research is conducted in compliance with the relevant statutes and regulations applicable to each Territory, and in particular those relating to health and safety.
3. Before the Research begins, and during the Research as may be required, you shall promptly obtain all consents and licences (including without limitation all institutional and personal licences, licences under ASPA and consents from the relevant ethical committees) that are necessary for the conduct of the Research and shall provide to us a copy of all such licences and consents.
4. Research conducted in the UK involving vertebrates and cephalopods that are subject to scientific procedures that may cause pain, suffering, distress or lasting harm must comply with the provisions of ASPA. All animals involved in the Research shall be kept in accordance with the codes of practice issued under ASPA. If the Research is conducted outside of the UK, all animals shall be kept to a standard that is at least equivalent to that set out under ASPA.
5. You shall permit the use of animals in scientific procedures only where there is no reasonable alternative available. Research should be planned with the welfare of the animals in mind, including the protection of the environment in which they live. Anyone involved in the care and handling of animals must be properly trained and fully aware of the legal and ethical issues involved.
6. Experiments using animals must use the simplest possible, or least sentient, species of animal, ensure that distress and suffering are avoided wherever possible and employ an appropriate experimental design and use the minimum number of animals consistent with ensuring that the scientific objectives will be met. You shall ensure that the Research is conducted in compliance with the rules and guidelines stated on the website of the National Centre for Replacement, Refinement and Reduction (“NC3R”): <http://www.nc3rs.org.uk/>.
7. You shall ensure that, where the Research involves the use of animals, all persons conducting the Research implement and adhere to the NC3R guidelines, ‘Responsibility in the Use of Animals in Bioscience Research’ ([www.nc3rs.org.uk/responsibility](http://www.nc3rs.org.uk/responsibility)).
8. You shall ensure that, where the Research involves the use of non-human primates, all persons conducting the Research comply with the NC3R guidelines, ‘Primate Accommodation, Care and Use’ (<http://www.nc3rs.org.uk/non-human-primate-accommodation-care-and-use>).

9. You shall ensure that the Research is conducted and all experiments are designed in a manner that conforms to the Animal Research: Reporting of *In Vivo* Experiments (“**ARRIVE**”) guidelines (<http://www.nc3rs.org.uk/arrive-guidelines>), and ensure that animal-based studies are reported in accordance with the ARRIVE guidelines as far as possible, taking into account the specific editorial policies of the journal concerned.

**ANNEX 3**  
**NOTIFICATION FORM**

**Exploitation of Action on Hearing Loss Grant-funded IP**

**Notification Form**

**Guidelines**

- Please complete this form as fully as possible. State N/A where questions do not apply.
- Attach latest versions of agreements where available.
- All information will be kept confidential.

**1. Contact Details**

Contact name:	
Address:	
Telephone:	
Fax:	
E-mail:	

**2. Action on Hearing Loss Grant**

Grant Holder(s) ( <i>Names of applicants</i> )	
Grantee ( <i>Name of Institute administering grant</i> )	
Title of grant	
Action on Hearing Loss grant number	
Type of grant (please tick)	Research Grant/ <input type="checkbox"/> Translational Research Grant  Fellowships <input type="checkbox"/>



### 3. Percentage of Contribution of Action on Hearing Loss Grant to the Grant Funded IP

Funders & Investors of the Grant Funded IP	% of contribution

### 4. Technology

Describe the technology <i>(briefly outline the invention, discovery or material)</i>	
Describe application(s) for the technology <i>(Outline the benefits exploitation could bring, e.g. therapeutics, medical devices anticipated)</i>	
Indicate type(s) of IP arising <i>(please tick as many as apply)</i>	Patent <input type="checkbox"/> Know-how <input type="checkbox"/> Materials <input type="checkbox"/> Database <input type="checkbox"/> Copyright <input type="checkbox"/> Design right <input type="checkbox"/> Other ..... <i>(specify)</i>

### 5. Patent

(If more than one patent, copy this section and complete for each patent)

Outline patent strategy (indicate patent filing strategy and key territories where protection will be sought)			
Inventor			
Patent title			
Patent number (most recent filing no. e.g. application no, publication no, priority no)			
Patent type	UK <input type="checkbox"/>	US <input type="checkbox"/>	
	European <input type="checkbox"/>	Other..... (specify)	
	PCT <input type="checkbox"/>		
Current status	Pending <input type="checkbox"/>	Granted <input type="checkbox"/>	Priority Date
	Published <input type="checkbox"/>	Other..... (specify)	

## 6. Exploitation Strategy

Who will manage Action on Hearing Loss-funded IP exploitation	Grantee <input type="checkbox"/>	
	Technology Transfer Group <input type="checkbox"/>	
	(state name).....	
Type of transaction	Exclusive <input type="checkbox"/>	Start-up <input type="checkbox"/>
	Non-exclusive <input type="checkbox"/>	Non-academic MTA <input type="checkbox"/>
	Licence <input type="checkbox"/>	Collaboration <input type="checkbox"/>
	Other .....	

		<i>(specify)</i>
Transaction status	In negotiation <input type="checkbox"/>	Agreement(s) <input type="checkbox"/> (please attach relevant agreements)
Names of party(s) <i>(State company)</i>		
Income/equity returns expected <i>(state amount, type, frequency of income (e.g. royalties, milestones, licence fees), and/or amount, type of equity if known)</i>		
Outline IP exploitation safeguards <i>(state what will happen to the IP if the third party(s) fails to exploit it)</i>		
Timeframe for exploitation <i>(please outline the timetable and key milestones for the exploitation)</i>		

### 7. Additional details

Please specify any other relevant information	
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This Notification Form must be signed by the Grantee's **Authorised Representative**.

## ANNEX 4

### NATURE AND PURPOSES OF PERSONAL DATA PROCESSING TO BE CARRIED OUT UNDER THIS AGREEMENT

#### Personal data to be collected and processed under this Agreement:

1. Names, professional contact details and CVs of named Grant-Holders and collaborators – no special category data is included.
2. Details of the Research, including the Application, annual progress reports, any additional progress reports that are provided, end of grant reports, financial reports, and updates on grant outcomes after the term of the Grant.

Any personal data that has been identified to us as being confidential will be kept confidential, and not made public under any circumstances.

#### Purposes of the data processing:

1. To manage the Grant, including making payments of the Grant and obtaining progress and financial reports.
2. To monitor progress of the Research, so that we can ensure that our funding is being spent according to the agreed budget, and that the Research is proceeding according to plan.
3. To monitor outcomes of the Research e.g. publications, further funding, patents etc, both during the Grant Period and after the Grant has ended, so that we can measure the impact that our research programme is having.
4. To allow us to raise funds in support of our cause, including our biomedical research programme, by providing information about the research we are funding to potential donors.
5. To keep our staff, supporters and the general public informed about the research we are funding, and the impact it is having.
6. To allow us to monitor our own research portfolio over time, and to monitor the research landscape so that we can make appropriate decisions about the research we fund.
7. To support our commitment to open-access research, so that everyone can access the research that we fund.
8. To fulfil the terms of our membership of the Association of Medical Research Charities, by providing them with information about the research that we fund so that they can carry out a charity sector-wide analysis of the research funding landscape.

#### Transfer of personal data to third parties:

To be able to process the personal data for the purposes above, Action on Hearing Loss may transfer personal data to selected third parties, including any co-funders of the Research who are named in this Agreement.

#### Retention period

We will retain this personal data throughout the Grant Period and after the Grant has ended, for as long as the Research is producing outcomes – this will likely be for several years. We will ensure that the data is kept up to date.