

**DATA TRANSFER 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 DATA:

(3) [*Description of DATA*] .....

**WHEREAS**

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

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

(C) King's agrees to provide the DATA 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 DATA.

"DATA" means any and all data generated by King's, including, but not limited to, SNPs, the results of genotyping and other bioassays, 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 DATA

- 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 DATA as specified in Schedule 1 and the Recipient at the Institution shall use the DATA 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 DATA 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 DATA in force in the country where the DATA is used.

- 2.3 King's retains ownership of the DATA. No licence under any King's intellectual property is granted or implied by this Agreement.
- 2.4 The Institution agrees that all rights and interest in and to the results of the Programme, including any new discovery, improvement or invention and any intellectual property rights therein ("Programme Results") shall be owned by King's. The Institution further agrees that all rights and interest in and to results arising out of work undertaken outside the agreed Programme shall belong to King's. King's shall grant the Institution a non-exclusive royalty-free licence, without the right to sub-licence, to the Programme Results solely for the Institution's internal non-commercial research. In addition, if any commercial revenues result from the Programme Results the Institution shall be entitled to a fair and reasonable share of any such revenues that accrue to King's, 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, analysis and distribution costs:

Payment of the above Transmissal Fee is not to be considered a sale of the DATA by King's or the Supplier and no right or licence is granted or implied as a result of the transfer of the DATA to the Institution or the Recipient.

- 2.6 The Institution shall ensure the Recipient keeps the DATA secure within the Recipient's laboratory at the Institution's premises and ensure that access to the DATA is restricted to the Recipient and those working under his/her direct supervision on the Programme.
- 2.7 The Institution shall not supply the DATA 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 DATA 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 DATA, 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 agrees to delay publication for an additional sixty (60) days if King's determines that the proposed publication or presentation contains patentable subject matter in order for King's to pursue such patent protection. 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 presentations 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 DATA 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, DATA 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 DATA delivered pursuant to this Agreement is understood to be experimental in nature. 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 DATA WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.
- 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 DATA. 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 DATA by the Institution, except to the extent imposed by law.

## **5. TERM AND TERMINATION**

- 5.1 King's is willing to provide the DATA 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 DATA 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.

[Signatures on the next page]

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

Date.....

Name:.....

Post Held:.....

Institution:.....

Department:.....

Postal Address:.....

.....

.....

.....

Postcode:.....

Country:.....

Telephone:.....

Fax:.....

Email:.....

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

Date.....

Name:.....

Post Held:.....

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

Date.....

Name .....

Title.....

SAMPLE ONLY NOT FOR USE

**SCHEDULE 1: Description of DATA**

**SCHEDULE 2: Description of Programme**

SAMPLE ONLY NOT FOR USE