**DATED** **2****0[ ]**

1. **THE WELLCOME TRUST LIMITED**
2. **[COMPANY] LIMITED**

**CONVERTIBLE LOAN AGREEMENT**

**(SHORTFORM)**

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**THIS AGREEMENT** is made and entered into as of the day of 20[ ]

**BETWEEN:**

(1) **THE WELLCOME TRUST LIMITED** a company registered in England & Wales with company no. 2711000 with registered address at 215 Euston Rd London NW1 2BE UK, as Trustee of the Wellcome Trust, a charity registered in England under no. 210183 (**“Wellcome”**); and

(2) **[COMPANY] LIMITED** a company registered in [England and Wales/Scotland] under number [•] whose registered office is at [Address] (the **“Company”**).

**RECITALS:**

In order to further its charitable objects, Wellcome has agreed to make programme-related investment by way of an unsecured convertible loan to the Company on the terms set out in this Agreement.

1. INTERPRETATION

## In this Agreement, unless the context otherwise requires:

|  |  |  |
| --- | --- | --- |
| * 1. 1
 | **“Accrued Interest”** | means interest payable and accrued in respect of the Loan as calculated in accordance with Clause 3.2;  |
| * 1. 1
 | **“Advance”** | means the borrowing of the Facility by the Company from time to time in accordance with Clause 2; |
| * 1. 1
 | **“Affiliate”** | means, with respect to a given entity, any person, corporation, partnership or other entity, that Controls, is Controlled by, or is under common Control with such entity;  |
| * 1. 1
 | **“Agreement”** | means this agreement including the Schedules hereto; |
| * 1. 1
 | **“Anniversary Date”** | means each anniversary of the Effective Date or, if such date is not a Business Day, the next following Business Day; |
|  | **[“Annual Meeting”** | shall have the meaning given to it in Clause 11.3;][[1]](#footnote-1) |
| * 1. 1
 | **“Application”** | means the application for an Innovations [Project] Award made by the Company as set out in Schedule 10; |
| * 1. 1
 | **“Audited Accounts”** | means the Company’s audited balance sheet and audited profit and loss account, each for the relevant financial year of the Company, together with the related cash flow statements, notes, directors’ reports and Auditors’ reports (unless statutory requirements dictate the accounts do not need to be audited, in which case the accounts shall be those approved by the Company’s accountants); |
| * 1. 1
 | **[“Auditors”** | means [Name of Auditors] or such other firm of chartered accountants as may be appointed as auditors of the Company from time to time;][[2]](#footnote-2)  |
| * 1. 1
 | **“Background IPRs”** | means:a) any IPRs created, devised or generated by the Company’s staff (including visiting researchers and students) working in the laboratory of the Principal Investigator or collaborating with the Principal Investigator prior to the commencement of, or during the term of, the Project (other than the Project IPRs), which is necessary or useful for undertaking the Project or the protection or exploitation of the Project IPRs including [list any specific patents from the Application], and b) any other IPRs owned by the Company or which the Company has rights to (other than the Project IPRs) which is actually used in the performance of the Project; |
| * 1. 1
 | **“Business Day”** | means a day on which banks are normally open for business and which is not a Saturday or Sunday or a bank or public holiday in [Scotland or]England and Wales; |
| * 1. 1
 | **“Change of Control”** | means, in relation to the Company, where a person (or persons acting in concert) directly or indirectly, including through any Subsidiary or Holding Company or Subsidiary of such Holding Company:1. has beneficial ownership over more than fifty percent (50%) of the total voting rights conferred by all the issued shares in the capital of the Company which are ordinarily exercisable in general meeting,
2. has the right to appoint or remove a majority of its directors, or
3. has power to direct that the affairs of the Company are conducted in accordance with its wishes,

in each case where such person or persons did not have such beneficial ownership, right or power at the Effective Date; |
| * 1. 1
 | **“Claim”** | means any claim by Wellcome for breach of any of the Warranties; |
|  | [“**Clinical Trial**” | means the clinical trial to be conducted under the Project;][[3]](#footnote-3) |
|  | [“**Clinical Trial Cover**” | means either:1. a clinical trial liability insurance policy which will cover the clinical trial due to take place as part of the Project, or
2. an NHS indemnity for clinical trials which will cover the trial due to take place as part of the Project together with evidence that the clinical trial due to take place as part of the Project shall be conducted with the permission of the NHS;][[4]](#footnote-4)
 |
| * 1. 1
 | **“Companies Acts”** | means Companies Act 1985, Companies Act 1989, Companies Act 2006, Business Names Act 1985 and Enterprise Act 2002; |
|  | **“Company Diligence Obligations”** | shall have the meaning given to it in Clause 14.1; |
| * 1.
 | **“Company TPC”** | means the Company’s Treasury Policy contact as set out at Clause 2.16 or such other contact as may be notified by the Company to Wellcome in writing from time to time in accordance with Clause 2.16; |
| * 1. 1
 | **“Control”** | means the direct or indirect ownership of more than fifty percent (50%) of the outstanding voting securities of an entity, or the right to receive more than fifty percent (50%) of the profits or earnings of an entity. Any other relationship which in fact results in one entity having a decisive influence over the management, business and affairs of another entity shall also be deemed to constitute Control; |
|  | **“Conversion Amount”** | means the amount of the Loan (excluding any Accrued Interest) to be converted into Conversion Shares; |
| * 1. 1
 | **“Conversion Price”** | means the price per share at which the Loan will be converted into shares in the Company as set out at Schedule 7; |
| * 1. 1
 | **“Conversion Shares”** | means the shares in the Company into which the Loan will be converted as set out in Schedule 7; |
|  | **[CTSC”** | means the clinical trial steering committee to be established to oversee the Clinical Trial;][[5]](#footnote-5) |
| * 1. 1
 | **“Disclosure Letter”** | means:1. as at the Effective Date, the disclosure letter dated the same date as this Agreement and accepted by Wellcome, and
2. after the Effective Date, the disclosure letter as subsequently amended and agreed by the Parties on the date of each Advance;
 |
| * 1. 1
 | **“Drawdown Date”** | means a Business Day on which an Advance is made; |
| * 1. 1
 | **“Drawdown Notice”** | means a notice in writing signed by the Company as detailed in Schedules 4 or 5 of this Agreement (as relevant); |
| * 1. 1
 | **“Drawdown Period”** | means the period starting on the Effective Date and ending on the date which is the earlier of the Repayment Date or [forty-eight (48)] months from the date of this Agreement; |
|  | **[“DSMB”** | means the data safety monitoring board established for the Clinical Trial;][[6]](#footnote-6) |
| * 1. 1
 | **“Effective Date”** | means [the date of this Agreement as set out at the top of page 3 of this Agreement]/[date]; |
| * 1. 1
 | **“Encumbrance”** | means any claim, charge, mortgage, security, lien, option, equity, power of sale, hypothecation or other third party rights, retention of title, right of pre‑emption, right of first refusal or security interest of any kind; |
|  | **“EASR”** | means an end of award spend report in the prescribed form setting out details of expenditure of the Loan on the Project; |
|  | **“End of Award Report”** | means an end of award report in the prescribed form which sets out details of the work undertaken and the outcomes of the Project;  |
|  | **“Equity Holding”** | means any equity or any other interest (whether by way of debenture, warrant, security or otherwise) in any third party company transferred or issued in consideration of the assignment or grant of a licence or an option thereto to such third party company in respect of any Project IPRs; |
| * 1. 1
 | **“Event of Default”** | means any event or circumstance listed in Clause 9.1; |
| * 1. 1
 | **”Expert”** |  shall have the meaning set out at Clause 16; |
| * 1. 1
 | **“Facility”** | means the loan facility made available by Wellcome to the Company on the terms and conditions of this Agreement; |
| * 1. 1
 | **“Facility Amount”** | means the maximum principal amount of the Facility being [insert maximum award amount in words and figures]; |
| * 1. 1
 | “**Fair Value**” | means the fair market value of any asset taking into account the following assumptions:1. the sale is between a willing seller and a willing purchaser on an arm’s length basis, and
2. the relevant asset is sold free of all restrictions, liens, charges and other Encumbrances,

or as determined by the Expert in accordance with Clause 16; |
|  | **[“Field”** | means [the diagnosis, prevention and treatment] of [insert] [caused by[ ]];][[7]](#footnote-7) |
| * 1. 1
 | **“Gross Revenues”** | means in any Year all income received by the Company during that Year excluding all equity investment in the Company or money paid to the Company by way of a grant; |
| * 1. 1
 | **“Group”** | means, in relation to any Party, its Holding Companies, its Subsidiaries and the Subsidiaries of those Holding Companies; |
| * 1. 1
 | **“Holding Company”** | see definition of Subsidiary; |
| * 1. 1
 | **“Institutional Investor”** | means a professional investor (not being an individual), including any member of a Venture Capital Association; |
| * 1. 1
 | **“IPRs”** | means:1. patents, designs, trademarks and trade names (whether registered or unregistered), copyright and related rights, database rights, know-how and Confidential Information,
2. all other intellectual property rights and similar or equivalent rights anywhere in the world which currently exist or are recognised in the future, and
3. applications, extensions and renewals in relation to any such rights;
 |
| * 1. 1
 | **“LIBOR”** | means the London Interbank Offered Rate, as published by the British Banking Association from time to time;  |
| * 1. 1
 | **“Listing”** | means the application and admission of all or any of the shares in the capital of the Company, or securities representing such shares (including American depositary receipts, American depositary shares and/or other instruments) to the Official List of the UK Listing Authority or on the AIM market operated by the London Stock Exchange plc, or the Nasdaq Stock Market LLC or to any investment or securities exchange; |
| * 1. 1
 | **“Loan”** | means the aggregate principal amount of the Facility from time to time borrowed and outstanding under this Agreement excluding any Accrued Interest; |
|  | **“Loan Conditions”** | means the following conditions:* + 1. no Event of Default is subsisting or would result from the proposed Advance;
		2. the Warranties are true and correct in all respects, subject to the matters set out in the relevant Disclosure Letter;
		3. Wellcome has received the relevant Disclosure Letter and the contents of such Disclosure Letter are reasonably acceptable to Wellcome;
		4. no written demand for repayment has been issued by Wellcome;
		5. other than in the case of a drawdown of the first tranche of the Facility, Wellcome has provided confirmation to the Company that the relevant Milestone has been met;
		6. in the case of the Retained Amount, the End of Award Report and EASR have been accepted by Wellcome in accordance with Clause 2.10;
		7. the Company’s then current Treasury Policy has been accepted by Wellcome in writing and the Company is in compliance with such Treasury Policy; and
		8. the credit rating of the Company’s bank receiving Advances of the Loan is in accordance with Wellcome’s minimum required credit rating from time to time;
 |
| * 1. 1
 | **“Milestones”** | means the Milestones as described in Schedule 1, and **“Milestone”** means any one of them; |
| * 1. 1
 | **“Milestone Date”** | means a date set out in Schedule 1 for the achievement of a particular Milestone; |
| * 1. 1
 | **“Net Revenues”** | means, in any Year, Gross Revenues less the amount of Operating Costs; |
| * 1. 1
 | **“Observer”** | means a person entitled to receive notice of, attend and speak (but not vote) at all meetings of the Board and committees of the Board; |
| * 1. 1
 | **“Operating Costs”** | means salaries, rental payable on real property leases and licences, operational and manufacturing costs, patent costs, payments made to advisors (including lawyers, accountants, patent attorneys and bona fide consultants), utilities, IT support, equipment, asset leasing and hire purchase arrangements (excluding company cars), consumables, cost of equipment; sub‑contractors directly related to the business of the Company and such other items as may be agreed by Wellcome but shall exclude capital expenditure, depreciation, interest payments to licensors of IPRs, taxes and fines; |
| * 1. 1
 | **“Parties”** | means the parties to this Agreement, and **“Party”** shall be interpreted accordingly; |
| * 1. 1
 | **“Principal Investigator”** | means [name of Principal Investigator]; |
|  | **[“Product”** | means [any pharmaceutical or biological composition or preparation for use in humans which [is intended to prevent, diagnose or treat disease ]in the Field] which incorporates, comprises or relies on the Project IPRs;][[8]](#footnote-8) |
| * 1. 1
 | **“Project”** | means the research activities described in the Application, as may be amended by written agreement between the Parties from time to time; |
| * 1. 1
 | **“Project Inventions”** | means any inventions created, devised or arising out of the Company’s undertaking and performance of the Project or any part of it; |
| * 1. 1
 | **“Project IPRs”** | means any IPRs created, devised or arising out of the Company’s undertaking and performance of the Project or any part of it; |
|  | **“Project Plan”** | means the plan of research originally incorporated in the Application and set out here for reference [together with any agreed updates] at Schedule 8; |
|  | **“Project Start Date”** | means [date] *OR* [the date upon which the Company commences work on the Project, such date to be:1. agreed between the Company and Wellcome, and
2. set out in a letter (in the form attached at Schedule 9) from the Company to Wellcome.

The letter setting out the Project Start Date is to be received by Wellcome prior to the commencement of work on the Project;  |
| * 1. 1
 | **“Project Revenues”**  | means any cash sums and other non-equity monetary consideration actually received by Wellcome from time to time in respect of its exploitation of Project IPRs under Clause 14, including the assignment or grant to any other person of a licence or an option thereto in respect of any Project IPRs, whether by way of royalties, licences fees or otherwise. Project Revenues shall include consideration received by way of royalties, any award of damages received by Wellcome in respect of enforcement of the Project IPRs, signature fees, lump sum payments, the provision of premises or equipment. Where such non-equity consideration is received other than in money the value of the consideration shall be determined by reference to the Fair Value of the goods, services, licence or other benefit to Wellcome as at the date of receipt by Wellcome and if the parties are unable to agree on the Fair Value such dispute shall be referred to an Expert under Clause 16. Project Revenues excludes Equity Holdings (which are dealt with separately); |
| * 1. 1
 | **“PubMed Central”** | means an archive of life science journal literature operated by the National Center for Biotechnology Information, a division of the US National Library of Medicine accessible at http://www.pubmedcentral.nih.gov/; |
|  | **“Repayment Amount”** | means the amount of the Loan and Accrued Interest that is to be repaid; |
| * 1. 1
 | **“Repayment Date”** | means the date which is five (5) Business Days following the date of any notice for repayment or conversion served by Wellcome on the Company pursuant to Clause 4.1; |
|  | **“Reasonable Efforts”** | means: * + - 1. with respect to the Company, making no less effort and committing no less resources than those commonly used by the Company or, if greater, a company of similar size and with similar resources to the Company and its Group in the [pharmaceutical][medical device][vaccine] industry when applied to [platforms], [compounds], [vaccines] and [products] at a similar stage of development, life cycle and healthcare potential to the Product being developed, taking into account: (a) all relevant factors including issues of safety and efficacy, product profile, difficulty in developing or manufacturing, sourcing raw materials necessary therefor, regulatory approvals, the patent or other proprietary position of the Product [in the Field] and the regulatory requirements involved; and (b) the Parties’ joint aim of developing the Background IPRs, Project IPRs and Product [in the Field] in a diligent and timely manner as indicated by the Milestones and Milestone Dates;
			2. means with respect to a third party: making no less effort and committing no less resources than those commonly used by that third party or, if greater, a company of similar size and with similar resources to the third party and its Group in the [pharmaceutical][medical device][vaccine] industry when applied to platforms, compounds, vaccines and products at a similar stage of development, life cycle and healthcare potential to the Product [in the Field] being developed, taking into account: (a) all relevant factors including issues of safety and efficacy, product profile, difficulty in developing or manufacturing, sourcing raw materials necessary therefor, regulatory approvals, the patent or other proprietary position of the Product [in the Field] and the regulatory requirements involved; and (b) the Parties’ joint aim of developing the Background IPRs, Project IPRs and Product [in the Field] in a diligent and timely manner as indicated by the Milestones and Milestone Dates;[[9]](#footnote-9)
 |
|  | **[“Safety Issues”** | shall have the meaning given to it in Clause 11.7;][[10]](#footnote-10) |
| * 1. 1
 | **“Sale”** | means:1. the acquisition by any person of more than fifty percent (50%) of the shares of the Company or all of the shares not already owned by the acquirer, or
2. the acquisition by any person of the business or assets of the Company or any material part thereof (for which purpose the Project IPRs shall be considered a material part of the Company’s assets);
 |
|  | **[“Sideground IPRs”** | means any IPRs created, devised or generated by the Company staff collaborating with, or working in with the Principal Investigator during the term of the Project (other than the Project IPRs) which is necessary or useful for undertaking the Project, or the protection or exploitation of the Project IPRs, subject to any third party obligations and which is agreed to be used in the Project pursuant to Clause 13;] |
| * 1. 1
 | **“Site Visit Group”** | means the group constituted in accordance with Clause 12; |
| * 1. 1
 | **“Subsequent Financing”**  | means the first round of financing by the Company following the Effective Date on arm’s length terms led by at least one Institutional Investor and that is not a grant, venture debt or an investment by a collaborative partner or licensee of the Company; |
| * 1. 1
 | **“Subsidiary”** | means a company of which another company, its **“Holding Company”**:1. holds a majority of the voting rights in,
2. is a member of and has the right to appoint or remove a majority of its board of directors, or
3. is a member of and controls alone, pursuant to an agreement with other members, a majority of the voting rights,

and shall include companies which are the subsidiary of a company that is itself a subsidiary of the Holding Company; |
| * 1. 1
 | **“Tax”** | means all forms of taxation, duties, imposts, levies and rates whenever created or imposed and whether of the United Kingdom or elsewhere and all penalties and interest payable in respect thereof; |
| * 1. 1
 | **“Treasury Policy”** | means the Company’s treasury policy as amended from time to time. A copy of the Company’s treasury policy (in English) as at the Effective Date is set out at Schedule 3; |
| * 1. 1
 | **“Venture Capital Association”** | means the British Venture Capital Association or any overseas body equivalent to it; |
| * 1. 1
 | **“Warranties”** | means the representations and warranties contained in Clause 5;  |
|  | **“Wellcome Policies”** | means Wellcome’s policy and positions as amended and updated from time to time and as set out at <https://wellcome.ac.uk/funding/guidance/policy-and-position-statements>; |
|  | **“Wellcome Direct Costs”** | means any costs and expenses incurred or allowed from time to time in accordance with this Agreement by or for the account of Wellcome under Clause 14 in marketing the Project IPRs and negotiating, concluding or enforcing agreements for the licensing or other exploitation of the same (including by way of acquisition of equity in a company), including:1. all reasonable legal, accounting and other professional fees and charges,
2. all costs associated with transferring entitlements to Equity Holdings to transferees,
3. official filing, prosecution, maintenance and renewal fees, and
4. travelling and other out‑of‑pocket expenditure; and
 |
| * 1. 1
 | **“Year”** | means a period of twelve (12) months starting on the Repayment Date or the Effective Date as the case may require and ending on the date twelve (12) months thereafter and each subsequent period of twelve (12) months. |

* 1. A reference to:
		1. a Clause or Schedule is to a Clause in or a Schedule to this Agreement;
		2. a person includes bodies corporate, unincorporated associations, partnerships and individuals;
		3. including and similar words do not imply any limitation; and
		4. a statue includes references to that statute as amended or replaced from time to time;
	2. Headings in this Agreement are inserted for convenience only and have no legal effect.
	3. References to the winding-up of a person include the amalgamation, reconstruction, reorganisation, administration, dissolution, liquidation, bankruptcy, merger or consolidation of such person and an equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled or resident or carries on business or has assets.
	4. Any reference to books, records or other information includes books, records or other information in any format or medium including paper, electronically stored data, video or audio recordings and microfilm.
	5. Where reference is made in this Agreement to the prior written consent of Wellcome being required in respect of any matter, the Company shall give not less than twenty (20) Business Days’ notice to Wellcome of the matter for which such consent is required.
1. LOAN TO BE ADVANCED BY WELLCOME
	1. **Use of the Loan.** The Company may use theLoan only for the purpose of funding the Project as described in the [Application] [Project Plan]. The Costs Schedule attached at Schedule 2 sets out how the Parties envisage the Facility Amount will be used for the Project. Any other use of the Loan is subject to the prior written consent of Wellcome.
	2. **Loan Conditions**. . Wellcome making Advances under the Facility is conditional on the Loan Conditions being satisfied on both the date of the Drawdown Notice and on the proposed Drawdown Date.
	3. **Drawdown of first tranche of Facility.**
	4. In order to draw down the Loan, the Company must provide to Wellcome within [sixty (60) Business Days] of the [Effective Date] [insert later date if Project Start Date is expected to be delayed]:
		* 1. [the Project Start Date Letter]
			2. a Drawdown Notice in the form set out in Schedule 4 (Drawdown Notice);
			3. a Disclosure Letter; [and]
			4. a Copy of the Company’s Treasury Policy; [and]
			5. [insert details of any additional financial documents required by Wellcome Finance as a result of Finance’s review of the Company’s finances e.g. most recent Company [audited] financial statements, most recent Management Accounts (including Company cashflow forecast for the period of Loan, Project cashflow showing income and expenditure projections for the period of the award etc.]
	5. **Payment of first tranche of Facility**. Subject to the satisfaction of the Loan Conditions, Wellcome shall release the first tranche of the Facility within twenty-five (25) Business Days of the later of:
		1. the date of receipt by Wellcome of the documents referred to in Clause 2.4; and
		2. the date of written confirmation from Wellcome to the Company of Wellcome’s acceptance of the Company’s then current Treasury Policy.
	6. **Obligations and Facility cancellation.**
		1. The Project Start Date shall be within six (6) months of the Effective Date.
		2. If no Drawdown Notice is received by Wellcome within six (6) months of the Effective Date, the Facility shall be cancelled unless agreed otherwise in writing by Wellcome.
		3. The obligations under Clauses [3, 4, 7 and 10 to 14 (inclusive)][[11]](#footnote-11) shall not come into effect unless and until such Drawdown Notice is submitted.
	7. **Drawdown of subsequent tranches.** Subject to the satisfaction of the Loan Conditions, the Company may draw down subsequent tranches of the Facility on the dates specified in Schedule 1. Subject to the provisions of Clause 2.8 and satisfaction of the Loan Conditions, the Company may draw down and Wellcome shall release subsequent tranches of the Facility within twenty-five (25) Business Days of the later of:
		1. the date of receipt by Wellcome of a Drawdown Notice; [and]
		2. the date of written confirmation from Wellcome to the Company of acceptance of the Company’s then current Treasury Policy[.] [; and]
		3. [insert details of any additional financial documents referred to at Clause 2.4 above].
	8. **Milestones**
		1. On the achievement of any Milestone by the relevant Milestone Date, the Company shall promptly provide Wellcome with a report setting out how the Milestone was achieved, the documents referred to at Clause 2.7 above and an updated Disclosure Letter.
		2. Within twenty (20) Business Days of receipt, Wellcome shall confirm to the Company in writing:
			1. Wellcome’s reasonable satisfaction with the Milestone Report,and the other documents set out at Clause 2.7, in which case subject to the satisfaction of the Loan Conditions, Wellcome will release the next tranche of the Facility to the Company within twenty five (25) Business Days of receipt by the Company of Wellcome’s written confirmation, or where the Company has amended its Treasury Policy, within twenty-five (25) days of the date of written acceptance from Wellcome to the Company of the amended Treasury Policy;
			2. The Milestone has not been achieved to Wellcome’s reasonable satisfaction by the relevant Milestone Date and the relevant tranche of the Facility will not be released, in which case Wellcome shall provide the Company with reasonable details of the grounds on which it has reached this decision. Wellcome may, at its sole discretion, grant the Company a reasonable period of time (“**Milestone Extension**”), in order to address the reasons why Wellcome has judged that a particular Milestone has not been met. Upon the expiry of a Milestone Extension, Wellcome shall, at its sole discretion, decide whether or not to provide any further tranches of the Loan to the Company, but Wellcome shall not be obliged to do so; [or]
			3. the contents of the Disclosure Letter are not reasonably acceptable to Wellcome and the relevant tranche of the Facility will not be released, in which case Wellcome shall provide the Company with reasonable details of the grounds on which it has reached this decision and such event shall constitute an Event of Default under Clause 9.1(c); or
			4. [the contents of the other documents and materials required by Wellcome Finance are not reasonably acceptable to Wellcome and the relevant tranche of the Facility will not be released, in which case Wellcome shall provide the Company with reasonable details of the grounds on which it has reached this decision].

If both the provisions of Clauses 2.8(b)(ii) and (iii), the provisions of Clause 2.8(b)(iii) shall prevail.

* 1. **End of Award reporting.** The Company shall complete and submit an End of Award Report and EASR to Wellcome, within three months following completion of the Project (or such other date as may be agreed with Wellcome). Wellcome will evaluate the End of Award Report and EASR and will notify the Company within twenty (20) Business Days of receipt whether these are acceptable to Wellcome, such approval not to be unreasonably withheld. If the End of Award Report or EASR is not acceptable to Wellcome, Wellcome shall notify the Company of its reasons at the same time, which may include that the reports (or either of them) are incomplete or insufficiently detailed.
	2. **Retained Amount.** Wellcome will retain up to ten percent (10%) of the Facility, subject to a maximum amount of one hundred thousand pounds sterling (the “**Retained Amount**”) until the following have been satisfied:
		1. achievement of Milestone [3] in accordance with Clause 2.8 above;
		2. receipt of an End of Award Report and EASR acceptable to Wellcome in accordance with Clause 2.9 above; and
		3. unless Wellcome agrees otherwise, research papers supported in whole or in part by the Loan have been confirmed to be compliant with Wellcome’s Open Access policy as set out in the Wellcome Policies.

On the satisfaction of (a) to (c) above, the Company may draw down the Retained Amount by submitting a signed Drawdown Notice to Wellcome.

* 1. **Drawdown Period.** If any Milestones have not been achieved by the last day of the Drawdown Period, the Facility shall be cancelled to the extent not borrowed, unless agreed otherwise in writing by Wellcome.
	2. **Payments.** All payments under this Agreement shall be made in [Pounds Sterling] by electronic wire transfer of immediately available funds directly to the account of the relevant Party.
	3. **Company Bank Account.** Payments from Wellcome to the Company under this Agreement shall be made to the Company bank account set out below:

|  |  |
| --- | --- |
| Account Name: | [ ] |
| Account No.: | [ ] |
| Bank: | [ ] |
| Sort code: | [ ] |
| SWIFT code: | [ ] |
| Branch: | [ ] |
| Account Currency: | [ ] |

* 1. **Notification of transfers.** A Party sending funds to another Party must provide written confirmation of the transfer to the Party receiving the funds in accordance with Clause 21.
	2. **Taxes.** Each Party shall pay any and all taxes levied in respect of all payments it receives or makes under this Agreement. Any withholding or other taxes that either Party is required by law to withhold or pay on behalf of the other Party, with respect to any payments to it under this Agreement, shall be deducted from such payments and paid contemporaneously with the remittance to such other Party, together with evidence of such withholding or payment. Such withholding and payment shall fully discharge the Party making the payment and no further payment shall be required by the payor to the payee. The Party withholding or making such payment shall furnish the other Party with appropriate documents to secure application of the most favourable rate of withholding tax under applicable law.
	3. **Company TPC.** The contact details of the Company TPC are set out below. The Company shall promptly notify Wellcome in writing of any changes to the identity and/or contact details of the Company TPC (with a copy to financialaccounting@wellcome.ac.uk).

**Company TPC:**

|  |  |
| --- | --- |
| Name: | [ ] |
| Position: | [ ] |
| Address: | [ ] |
| Phone number: | [ ] |
| Email: | [ ] |

* 1. **Amendment to Company Treasury Policy.** In the event that the Company makes any amendments to the Treasury Policy most recently accepted in writing by Wellcome, the Company shall prior to such changes taking effect:
		1. notify Wellcome in writing (with copy to financialaccounting@wellcome.ac.uk) of the amendments to the Treasury Policy; and
		2. provide a copy (in English) of the amended Treasury Policy to Wellcome (with a copy to Financial accounting@wellcome.ac.uk) for acceptance by Wellcome.
	2. Wellcome shall notify the Company in writing whether such amended Treasury Policy has been accepted by Wellcome as soon as is reasonably practicable.
1. INTEREST
	1. **Interest.**  Interest is payable on repayment on the amount(s) of the Loan. Interest is not payable on any amount(s) of the Loan converted into Conversion Shares. On the conversion of any amount of the Loan into Conversion Shares any Accrued Interest in respect of such Conversion Amount falls away and is not be repayable
	2. **Interest calculation on repayment.** Accrued Interest shall be deemed to have accrued on a daily basis (by reference to a year of three hundred and sixty five (365) days) on the amount of the Loan from time to time outstanding at the rate of two percent (2%) per annum above the three month sterling LIBOR from time to time. Accrued Interest shall be added to the principal amount of the Loan annually on each Anniversary Date and on each Repayment Date (if the relevant Repayment Date is not an Anniversary Date).
	3. **Default interest.** Where the Company fails to pay any amount due under this Agreement on the relevant due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgement) at a rate which is the sum of three percent (3%) per annum and the rate which would have been payable if the overdue amount had constituted a loan in an amount equal to such overdue amount on the same terms as the Loan. Any interest accruing under this Clause 3.3 shall be immediately payable by the Company on demand.
2. CONVERSION OR REPAYMENT OPTION
	1. **Conversion and repayment.** Wellcome may by notice to the Company:
		1. at any time, convert the Loan (or part of the Loan) to fully paid new Conversions Shares; and
		2. require immediate repayment of the full amount or part only of the Loan together with Accrued Interest in the following circumstances:
			1. at any time after the [third] anniversary of the Effective Date;
			2. in the case of a Sale, immediately prior to the completion of a Sale;
			3. in the case of a Listing, immediately prior to admission to trading of the shares of the Company on the applicable stock exchange; or
			4. in the case of an Event of Default, in accordance with Clause 9.
	2. **Conversion.** On conversion, the Conversion Amount shall be converted into such number of shares of fully paid new Conversion Shares as, at the Conversion Price, have an aggregate value equal to the Conversion Amount (as nearly as practicable, ignoring fractions and rounding down to the nearest whole number of Conversion Shares). The Company shall issue the appropriate number of new Conversion Shares to Wellcome and, as soon as practical (and in any event no later than twenty (20) Business Days following receipt of notice from Wellcome), shall enter Wellcome as a member in its register of members and send a share certificate to Wellcome at the address set out in Clause 21. The Company undertakes to obtain all necessary shareholders consents and approvals as may be required to issue the Conversion Shares to Wellcome as soon as reasonably practicable.
	3. **Wellcome’s rights on conversion.** On conversion of the Loan into Conversion Shares:
		1. Wellcome shall for as long as it holds at least five percent (5%) of the total issued share capital of the Company from time to time, be entitled to appoint a director to the Board or, if at any time it decides not to exercise such a right, to appoint an Observer to the Board. The Observer shall be entitled to receive notice of meetings, copies of the minutes of meetings and copies of all other papers circulated to the Board and any sub-committees as if he were a director;
		2. Wellcome shall be a party to a shareholders agreement which will be entered into by the major participants in the Company and which will include a standard list of matters which will require the prior approval of the participating investors before being undertaken by the Company and also a comprehensive list of financial and other information which must be provided by the Company to the participating investors;
		3. the shareholder agreements or Articles of Association of the Company will include standard tag along and co-sale rights as agreed upon by the investors in the Company; and
		4. Wellcome will be entitled to standard inspection and visitation rights on the same terms as the other investors in the Conversion Shares.
	4. **Written demands.** Written demands from Wellcome requiring repayment or conversion of the Loan (or both) shall state:
		1. For repayment: the Repayment Amount, the Repayment Date and the details of the Wellcome bank account into which the Repayment Amount should be paid; and
		2. For conversion: the amount of the Loan to be converted into Conversion Shares.
	5. **Repayment.** On receipt of a valid written demand for repayment from Wellcome:
		1. on the Repayment Date, the Company shall pay to Wellcome an amount equal to twenty percent (20%) of the Net Revenues of the Company received by it during the Year immediately preceding the Repayment Date (provided it does not exceed the Repayment Amount) and, thereafter, on each subsequent anniversary of the Repayment Date, an amount equal to twenty percent (20%) of the Net Revenues of the Company received during the Year immediately preceding that anniversary until the Repayment Amount has been paid in full; and
		2. if the Repayment Amount has not been repaid in full pursuant to Clause 4.5(a) or converted into Conversion Shares by the date seven years from the Effective Date (the “**Cut-Off Date**”), the Company shall (in lieu of making any payments under Clause 4.5(a)) on the first anniversary of the Repayment Date following the Cut-Off Date pay Wellcome an amount equal to twenty percent (20%) of the Gross Revenues of the Company received by it during the Year immediately preceding that anniversary and on each subsequent anniversary of the Repayment Date an amount equal to twenty percent (20%) of the Gross Revenues of the Company received during the Year immediately preceding that anniversary until the Repayment Amount has been repaid in full.
3. WARRANTIES

5.1 **Warranties.** In connection with the transactions provided for in this Agreement, the Company represents and warrants to Wellcome that on the Effective Date, on the date of any Advance, and immediately prior to conversion of any part of the Loan (in each case, subject to matters fairly and accurately disclosed in the Disclosure Letter) that:

### 5.1.1 the Company has been duly incorporated and is validly existing under the laws of England and Wales and has not been dissolved, wound-up or liquidated and no petition or application has been presented or made in respect of the same;

### 5.1.2 the Company has all requisite corporate power and capacity to own its own property and assets and to carry on its business as now being conducted and enter into and deliver this Agreement and to perform its obligations under this Agreement;

### all corporate action has been taken on the part of the Company, its directors and shareholders necessary for the authorisation, execution and issuance of the Loan and any Conversion Shares under this Agreement, which shall constitute the valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms;

### the Company has acquired all material licences, registrations, authorisations, permits, approvals and consents necessary to carry on its business and such licences, registrations, authorisations, permits, approvals and consents are in good standing;

### the Company is conducting its business in compliance in all material respects with all applicable laws, rules and regulations of each jurisdiction in which it carries on its business;

### this Agreement, when executed, will constitute a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms;

### neither the execution of this Agreement or compliance with the terms, conditions and provisions of this Agreement, will conflict with, accelerate the terms of, or result in a breach of any of the terms, conditions or provisions of:

* + - 1. any agreement, instrument or arrangement to which the Company is now a party or by which it is or may be bound, or constitute a default thereunder;
			2. any judgment or order, writ, injunction or decree of any court; or
			3. any applicable law, regulation or regulatory policy;

### the Company has provided to Wellcome all information which is material to the Project and that is material to Wellcome granting a (convertible) loan to the Company, and this information is true, accurate and not misleading; and

### the Loan and all IPRs which are, or are likely to be, material to the business of the Company and/or the Project are, free of Encumbrances and vested in the Company.

* 1. **Inducement.** The Company acknowledges that it has given the Warranties with the intention of inducing Wellcome to enter into this Agreement and, as the case may be, to make the Advances on the achievement of each of the Milestones and that Wellcome has been induced to enter into this Agreement and make available the Facility on the basis of and in full reliance upon them.
	2. **Separate warranties.** Each of the Warranties shall be construed as a separate and independent warranty and (save where expressly provided to the contrary) shall not be limited or restricted by reference to or inference from any other term of this Agreement or any other Warranty.
	3. **Meaning of “knowledge”.** Where any statement in the Warranties is qualified by reference to the knowledge, awareness or belief of the Company, the Company shall be deemed to be aware of all matters which it would have known (or its directors would have known) if it/they had made diligent and careful enquiry.
	4. **Disclosures.** The Company shall immediately disclose in writing to Wellcome any fact, matters, circumstances or other information which becomes known to it which:
		1. is a breach of or can reasonably be expected to be, or be likely to cause, a breach of any of the Warranties
		2. is material to the Loan, conversion of the Loan or the financial status of the Company, or
		3. is material to the Project,the development and exploitation of the Background IPRs, Project IPRs and [Sideground IPRs].
	5. **Remedy for breach of Warranty.** To the extent that any breach of the Warranties is in the reasonable opinion of Wellcome capable of remedy, Wellcome may, at its discretion, afford the Company an opportunity to remedy the matter complained of within thirty (30) Business Days of receipt of written notice from Wellcome specifying the breach and requiring its remedy.
1. LIMITS ON LIABILITY
	1. **Liability.** Subject to Clause 6.3 below, the maximum liability in aggregate of each of the Parties arising out of this Agreement shall not exceed the Facility Amount, or if larger, the amount of the Loan and Accrued Interest due thereon.
	2. **Exclusion of certain damages.** Except in circumstances of fraud or wilful misconduct by a Party or its Affiliates, no Party or any of its Affiliates shall be liable to the other Party or any Affiliate of the other Party for special, indirect, incidental or consequential damages, whether in contract, warranty, negligence, tort, strict liability or otherwise, arising out of any breach of or failure to perform any of the provisions of this Agreement.
	3. **Liability that cannot be excluded.** Nothing in this Agreement shall limit the liability of either Party in respect of:
		1. personal injury or death arising out of that Party’s negligence or wilful misconduct; or
		2. fraud or fraudulent misrepresentation.
	4. **Exclusions from Company liability.** The Company shall not be liable and no Claim or Claims shall be made against it:
		1. if the fact, omission, circumstances or occurrence giving rise to the Claim has been fairly and accurately disclosed to Wellcome in the Disclosure Letter;
		2. if the matter giving rise to the Claim is provided for under the terms of this Agreement; or
		3. if the Claim arises from any act, matter or thing done by the Company at and in accordance with the written request of Wellcome.
2. AUDIT
	1. **Control of expenditure.** The Company shall procure that the control of expenditure to be funded under this Agreement is governed by the normal standards and procedures of the Company and is covered by the formal audit arrangements that exist in the Company.
	2. [**Company Auditors.** Wellcome (at its own expense) shall have the right to ask for confirmation from the Auditors that the Auditors have signed their opinion on the annual accounts of the Company without qualification and that any management letter(s) raises no matters that have, or could, significantly affect the administration of the Loan made by Wellcome.][[12]](#footnote-12)
	3. **Wellcome audit rights.** Wellcome shall have the right, at its discretion and expense, to audit (either directly or via third parties engaged by it) any expenditure of the Facility Amount and any amounts or equity due to Wellcome under this Agreement. To this end, the Company shall provide access (during normal business hours) to accounting and other financial and corporate records relating to this Agreement for auditors and other personnel from or appointed by Wellcome, if requested by Wellcome at any time. Such access shall include the right to inspect any equipment acquired under the Facility. Where elements of expenditure under this Agreement have been subcontracted, the Company shall ensure that the right of access extends to the accounts and records of any such subcontractor.
3. TERMINATION
	1. **Survival on termination.** Except for the provisions of [Clauses 5 (Warranties), 6 (Limits on Liability), 10.4 (Use of Wellcome Name), 11 (Project Reporting and Oversight, 13 (IPRs Ownership, [Management]; and Infringement), 14 (Unexploited IPRs), [15 (Further Funding)], 16 (Expert Determination), 19 (Announcements), 20 (Confidentiality), 21 (Notices), 22 (Assignment) and 27 (Governing Law)][[13]](#footnote-13), this Agreement shall terminate immediately following the full repayment of the Loan and any Accrued Interest in cash or by conversion of the Loan into shares in accordance with Clause 4.
4. EVENTS OF DEFAULT
	1. **Events of Default.** The following events or circumstances set out in this Clause 9.1 shall each constitute an Event of Default:
		1. the Company fails to issue new Conversion Shares to Wellcome if requested by Wellcome in accordance with Clause 4;
		2. any material breach of this Agreement, including any material breach of a Warranty by the Company, subject to the matters set out in any Disclosure Letter which has been accepted by Wellcome;
		3. the failure of the Company to provide a Disclosure Letter, the contents of which are reasonably acceptable to Wellcome;
		4. the Company is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness, or has filed in any court or agency pursuant to any statute or regulation of any state or country, a petition in bankruptcy or insolvency or for reorganisation or for an arrangement or for the appointment of a receiver or trustee of the Company or its assets, or if the Company is served with an involuntary petition against it, filed in any insolvency proceedings, and such petition is not dismissed within sixty (60) days after the filing thereof, or if the Company has proposed or is a party to any dissolution or liquidation (other than where the Company is a creditor claiming repayment in such dissolution or liquidation), or if the Company makes an assignment for the benefit of creditors;
		5. the Company ceases or threatens to cease to carry on all or a substantial part of its business or operations necessary for the completion of its obligations under this Agreement;
		6. the Company takes any action, or omits to take any action, the consequences of which, in the reasonable opinion of Wellcome, would be incompatible with or have an adverse effect (i) on Wellcome's charitable objectives or reputation, or (ii) on the ability of the Company to comply with its obligations under this Agreement, including undergoing a Change of Control;
		7. Wellcome and the Company are unable to agree a replacement for the Principal Investigator under Clause 10.7; or
		8. the Site Visit Group recommends to Wellcome’s Innovations Team that Wellcome terminates the Project under Clause 12.2 and the Company fails to correct any identified failings within the time period granted by Wellcome (if any) under Clause 12.3.
	2. **Wellcome’s rights on Event of Default.** On the occurrence of an Event of Default Wellcome may in its absolute discretion serve written notice on the Company (“**Default Notice**”) and, at its option, Wellcome may:
		1. convert all or part of the Loan;
		2. require the immediate repayment of the Loan and Accrued Interest pursuant to Clause 9.3 below; and/or
		3. terminate this Agreement;

provided that in the case of the Events of Default described in Clauses 9.1 (a), (b) or (c), Wellcome shall permit the Company twenty (20) Business Days from the date of receipt of the Default Notice to remedy any such Event of Default (if such Event of Default is capable of remedy) to the satisfaction of Wellcome.

* 1. **Repayment on an Event of Default.** If Wellcome requires repayment of the Loan and Accrued Interest on the occurrence of an Event of Default the Loan and Accrued Interest shall be repayable as follows:
		1. Within twenty (20) Business Days of the date on which Wellcome notifies the Company that repayment is required pursuant to Clause 9.2(b) (the “**Notification Date**”), the Company shall refund to Wellcome any portion of the Loan advanced by Wellcome but not yet spent (other than any amount which the Company has irrevocably committed to pay to a third party, provided that the Company shall use all reasonable endeavours to minimise any further payments that it is required to pay) and shall provide to Wellcome such information as Wellcome may reasonably require to enable Wellcome to verify compliance with this paragraph; and
		2. the balance of the Loan and Accrued Interest not repaid pursuant to Clause 9.3(a).
	2. **No further Advances.** Following the service of a Default Notice, Wellcome shall not be required to make any further Advance of the Loan.
1. OBLIGATIONS OF THE COMPANY
	1. **Project**. The Company shall use Reasonable Efforts to perform and complete the Project in accordance with this Agreement, the Project Plan, including achieving any Milestones by the relevant Milestone Dates.
	2. **Prohibited actions.** The Company undertakes to Wellcome (so far as it is legally able) that the Company shall not, and none of the Company’s Subsidiaries (if any) shall, do any of the following whilst the Loan is outstanding without the prior written consent of Wellcome (which shall not be unreasonably withheld, conditioned or delayed):
		1. make any amendment to its Memorandum of Association or Articles of Association;
		2. enter into any transactions involving any of the Background IPRs [, or] Project IPRs [, or Sideground IPRs];
		3. make any change in the share capital or the creation, allotment or issue of any shares or of any other security or the grant of any option or rights to subscribe for or to convert any instrument into such shares or securities, save for options to acquire ordinary shares in the Company granted under any employee share scheme;
		4. create a Subsidiary or Holding Company;
		5. make any variation of the rights, preferences or privileges attaching to any class of shares in the Company including any disapplication of pre-emption rights and anti-dilution protection;
		6. make any payment of dividends on any class of shares;
		7. make any material change to the general nature of the business of the Company as carried on as at the Effective Date; or
		8. create any new Encumbrance or increase any existing Encumbrance over any of the assets of the Company (other than any netting or set-off arrangement entered into in the ordinary course of the Company’s banking or financing arrangements for the purpose of netting debit and credit balances; or any lien arising by operation of law and in the ordinary course of business).
	3. **Company Information.** The Company shall supply to Wellcome:
		1. details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Company or any of its directors and any adverse opinion of the Auditors as soon as it becomes aware of them; and
		2. additional financial or corporate information relating to the Company (including details of shareholdings, management accounts, minutes of board meetings, Audited Accounts) upon Wellcome’s request.
	4. **Use of Wellcome name.** The Company shall not use the “Wellcome Trust” name or logo except with the prior written consent of Wellcome and in the manner approved by Wellcome except where the Company is legally required to disclose the source of funding for the Project.
	5. **Compliance with law.** The Company shall be responsible for the management, monitoring and control of all research work undertaken under the Project. This shall include, as appropriate, the requirements of all applicable laws and regulatory authorities, including those governing the use of radioactive isotopes, animals, pathogenic organisms, diagnostic tools, medical devices, genetically modified organisms, toxic and hazardous substances, research on human subjects and human embryos, and include appropriate ethical approvals and consents, including such approvals and consents for obtaining tissues and other human samples.
	6. **Wellcome Policies.** The Company shall ensure that all work undertaken under the Project and the development and exploitation of the Project IPRs [and Products] [in the Field] [in any application] comply with the Wellcome Policies.
	7. **Principal Investigator.** If the Principal Investigator ceases to be involved with the Project, ceases to be employed by or provide services to the Company, or is prevented through illness, injury or death from promptly fulfilling his obligations in respect of the Project, the Company shall propose a replacement Principal Investigator and shall notify Wellcome of such person for approval by Wellcome, such consent not to be unreasonably withheld. Wellcome shall confirm to the Company within twenty (20) Business Days of receipt of such notification whether or not it approves such appointment. If Wellcome and the Company are unable to agree upon a replacement, this will constitute an Event of Default under Clause 9.1(g) and Wellcome may terminate the Agreement.
	8. **[Clinical trials.** The Company shall procure that the Clinical Trial which is undertaken by the Company, its collaborators, sub-contractors or service providers under the Project; must be conducted in accordance with Wellcome’s Clinical Trial Policy <https://wellcome.ac.uk/funding/guidance/wellcome-trust-policy-position-clinical-trials> and in accordance with recognised good practice guidelines.
	9. **Clinical Trial Cover.** Subject to Clause 10.10, prior to the commencement of the Clinical Trial, the Company shall take out and maintain, or procure adequate Clinical Trial Cover which must be effective from the commencement date of the Clinical Trial until at least three (3) years after the completion of the Clinical Trial. The adequacy of such Clinical Trial Cover shall be considered in relation to generally accepted industry standards at the time of the Clinical Trial.
	10. **Clinical Trials undertaken by third parties.** In the event that a collaborator, sub-contractor or service provider is undertaking the Clinical Trial under the Project on behalf of the Company, the Company shall:
		1. procure that such collaborator, sub-contractor or service provider (as appropriate) confirms in writing that it shall comply with Clause 10.9 as if it was the Company; and
		2. provide written confirmation of this to Wellcome. ]

***OR***

* 1. [It is envisaged that the Project shall include research including human participants. The Company shall procure that prior to the commencement of such research, it shall take out and maintain, or procure adequate insurance cover which must be effective from the commencement date of such research until at least three (3) years after the completion of such research. The adequacy of such insurance cover shall be considered in relation to generally accepted industry standards. If the relevant research is carried out by the Company’s collaborators, sub-contractors or service providers, the Company shall procure that such collaborator, sub-contractor or service provider (as appropriate) confirms in writing that it shall comply with this Clause 10.11 as if it was the Company; written confirmation of this shall be promptly provided by the Company to Wellcome.]
1. PROJECT REPORTING AND OVERSIGHT
	1. **Project records.** The Company shall upon request make available to Wellcome copies of all records generated in connection with the Project [except for records that should remain blinded to Wellcome to ensure the integrity of the Clinical Trial][[14]](#footnote-14). The Company shall ensure that data reported to Wellcome relevant to the progress of the Project are reliable, accurate and not misleading.
	2. **Project Inventions.** The Company shall procure that the Principal Investigator monitors the Project for material that may be the subject of Project Inventions and shall promptly notify Wellcome of any such Project Inventions.

 **[OPTIONAL WORDING: CTSC]**

* 1. **CTSC.** Prior to commencement of the Clinical Trial, the Company shall establish a CTSC to operate for the duration of the Clinical Trial and continue operating until publication of the results of the Clinical Trial. The Company shall ensure that the CTSC is kept informed of all developments and progress made concerning the Clinical Trial (except for any information that should remain blinded to the CTSC to ensure the integrity of the Clinical Trial). The Company shall procure that the CTSC shall have the right to:
		1. review all documents and correspondence relating to the planning of the Clinical Trial;
		2. review all correspondence with regulatory authorities in connection with the Clinical Trial;
		3. monitor the conduct of the Clinical Trial and progress;
		4. review interim analyses of Clinical Trial data in accordance with the Clinical Trial’s protocol;
		5. critically assess the on-going progress of the Clinical Trial and the Project;
		6. approve the composition and charter of the DSMB and review all correspondence with the DSMB and minutes of meetings of the DSMB (excluding any information which should remain blinded to the CTSC to ensure integrity of the Clinical Trial);
		7. identify and address any weaknesses in the Clinical Trial;
		8. monitor internal and outsourced components of the Clinical Trial including reviewing the terms of all collaborations or subcontracts; and
		9. operate as the key forum through which Wellcome (via Wellcome’s observers referred to below) is informed of the progress of the Clinical Trial (including any delays).

The Company shall ensure that the CTSC has no right or power to amend or vary the terms of this Agreement or alter the fundamental scope or objectives of the Clinical Trial.

* 1. **Wellcome observers.** Wellcome may appoint up to [two (2)] representatives or nominees who shall have the right to attend meetings of the CTSC in person, by telephone or other electronic means as observers. The Company shall ensure the Wellcome observers receive all notices and materials provided to members of the CTSC at the same time as the members of the CTSC Wellcome observers shall have no right to participate in decisions of the CTSC. Wellcome shall notify the Company of any proposed independent industry adviser(s) that Wellcome intends to appoint as its CTSC observer(s). The Company shall have ten (10) Business Days from notification by Wellcome to notify Wellcome of any concerns regarding the independence of the proposed independent industry adviser(s) which Wellcome shall consider in good faith. Wellcome shall procure that all independent industry advisers appointed as Wellcome CTSC observers are bound by written confidentiality obligations equivalent to those set out in Clause 20. Wellcome shall have the option to remove its CTSC observer(s) and to appoint any person to fill a vacancy(ies) arising from the removal or retirement of Wellcome’s CTSC observer(s). Wellcome shall give prior written notice to the Company of any proposed changes in the identity of Wellcome’s CTSC observer(s).
	2. **Safety Issues.** The Company shall notify Wellcome, the Wellcome observers and CTSC Members immediately by email (with receipt acknowledgement) as well as in writing in accordance with Clause 21:
		1. on receipt of any information that raises any material concerns regarding safety or efficacy;
		2. where any data discloses a serious adverse event;
		3. where a serious adverse event is suspected;
		4. on the occurrence of a serious adverse event, serious adverse reaction, or any other material safety signal;
		5. of any recommendations from the DSMB to end the Clinical Trial;

(together, the “**Safety Issues**”).]

1. SITE VISIT GROUP
	1. **Site Visit Group.** Wellcome may appoint a Site Visit Group, made up of a small team of independent experts and observers from Wellcome’s Innovations Team. The Company shall have ten (10) Business Days from notification by Wellcome to notify Wellcome of any concerns regarding the independence of the designated members of the Site Visit Group, which concerns Wellcome shall consider in good faith. The Site Visit Group shall have reasonable access during normal working hours and at mutually agreed times to visit the premises where the Project is being conducted to consult informally with the Company’s researchers, consultants or contractors working on the Project, to evaluate progress, performance and key issues and to report back to Wellcome on their findings.
	2. **Recommendations.** The Site Visit Group may recommend that Wellcome terminates the Project due to a serious failure in the progress, management or conduct of the Project (including a finding that the Project will be unable to achieve the next Milestone within a reasonable time period after the relevant Milestone Date, or due to a major external scientific, technical or commercial barrier which the Site Visit Group considers will mean that the Project is unlikely to succeed in its objectives). If the Site Visit Group makes such a recommendation pursuant to this Clause 12.2, this constitutes an Event of Default under Clause 9.1 (h) and Wellcome may terminate this Agreement.
	3. **Corrective action.** Wellcome may, in its sole discretion, allow the Company a reasonable period of time to take corrective action to address any failings identified by the Site Visit Group (if such failings are capable of correction). If Wellcome grants the Company a period of time to correct such failings and the Company does not correct such failings within the period specified by Wellcome (if any), Wellcome shall retain the right to terminate this Agreement pursuant to Clause 9.1(n).
2. IPRS
	1. **Ownership of Project IPRs.** Project IPRs created or arising under the Project will vest in and be the sole property of the Company.
	2. **Patent filings for Project IPRs.** The Company is responsible for seeking and maintaining protection for Project IPRs at its sole cost, including the filing, conduct, prosecution and maintenance of all patents arising in respect of Project Inventions. Patent applications filed in respect of Project Inventions must be filed in the name of the Company.
	3. **Background IPRs.** The Company shall make the Background IPRs available for use in the Project and for the protection, development and exploitation of the Project IPRs.

**[OPTIONAL WORDING: SIDEGROUND IPRS]**

* 1. [**Sideground IPRs.** The Company shall promptly inform Wellcome where any potential Sideground IPRs arises. Prior to incorporating such potential Sideground IPRs into the Project, the Company shall provide Wellcome with details in writing of (i) the nature of the potential Sideground IPRs and (ii) any third party rights attaching thereto. The Parties shall then agree whether such potential Sideground IPRs should be incorporated into the Project (and therefore become “**Sideground IPRs**”). If it is agreed that such potential Sideground IPRs are to be incorporated into the Project:
		1. the date that the Parties agree to incorporate the Sideground IPRs into the Project is herein referred to as the “**Incorporation Date**”;
		2. subject to any third party rights which may exist at the Incorporation Date, the Company shall make the Sideground IPRs available for use in the Project and for the protection or exploitation of the Project IPRs; and
		3. unless otherwise agreed in writing with Wellcome, the Company shall retain responsibility for seeking and maintaining protection for the Sideground IPRs at its own cost.]
1. PROJECT IPRS: EXPLOITATION
	1. **Company diligence obligations.** Assuming that the results of the Project are positive and there are no significant barriers to further development and exploitation, the Company agrees to use Reasonable Efforts to further develop and exploit the Project IPRs and Products [in the Field] either itself or through third parties in accordance with the Wellcome Policies including Wellcome’s approach to equitable access to healthcare interventions (see <https://wellcome.ac.uk/wellcomes-approach-equitable-access-healthcare-interventions>) including:[[15]](#footnote-15)
		1. [Within six (6) months of [completion of the Project] [completion of the Clinical Trial] providing to Wellcome a development plan for the [Project IPRs] [Products] [in the Field] including further clinical trials and funding for such development, such plan to be subject to approval by Wellcome;]
		2. [Within six (6) months of making an application for marketing approval for [Products] [in the Field] provide to Wellcome for approval a marketing plan setting out the planned activities to make [Products] [in the Field] available [in countries where infections in the Field are endemic] including an appropriate and proportionate global access plan that covers registration targets, plans to meet demand, flexible approaches to IPRs and other strategies that reflect ability to pay in particular countries and populations and ensure that economic barriers to access to [Products] [in the Field] are low; and]
		3. [Within six (6) months of obtaining marketing approval for [Products] [in the Field]:
			1. commence implementing the marketing plan approved by Wellcome referred to at Clause 14.2 (b) above; and
			2. commence selling, distributing and making available [Product] [in the Field] in countries where [infections in the Field are endemic]; and
			3. [other ];]

(together, the “**Company Diligence Obligations**”).

* 1. **Wellcome consent to exploitation.** The Company shall obtain prior written consent from Wellcome before exploiting any of the Project IPRs or [Products] [in the Field] directly or via third parties. Wellcome shall only withhold its consent to exploitation where:
		1. the proposed exploitation is inconsistent with Wellcome’s mission, Wellcome Policies or the provisions of this Clause 14;
		2. Wellcome has material concerns about the capability, solvency or reputation of any third party who is proposed to be involved in the exploitation;
		3. the Company plans to transfer or licence the Project IPRs to a third party but does not also intend to transfer to the third party the Company Diligence Obligations [in such a way that Wellcome could enforce the obligations directly against such third party]; or
		4. the proposed exploitation agreement fails to provide for a reversion to the Company of the Project IPRs and [Products] [in the Field] where the licensee materially breaches the Company Diligence Obligations.
	2. **Monitoring of public healthcare benefit.** In order to assist Wellcome in monitoring the public healthcare benefit derived from Wellcome funding, for the duration of exploitation of [Products] [in the Field] and regardless of whether Wellcome has converted the Loan or been repaid, the Company shall report annually to Wellcome at the end of its financial year (or where the Company is exploiting the Project IPRs and/or [Products] [in the Field] via third parties, procure that such third parties report annually to Wellcome) [the number of [doses of] [Products] [in the Field] sold, supplied or made available for distribution globally and in each country [where infections in the Field are endemic] [insert suitable metrics for measurement of outcomes and outputs of the funded Project to enable Wellcome to measure and track results]].[[16]](#footnote-16)
	3. **Wellcome exploitation rights.** If:
		1. the Company and/or any third party materially breaches the Company Diligence Obligations; and/or
		2. any Project IPRs or [Products] [in the Field] remain unexploited or not further developed by the Company and/or their licensees in any country [where infections in the Field are endemic] within [five (5) years] following completion of the Project;

Wellcome shall have the option in its sole discretion by giving written notice to the Company to take responsibility on behalf of the Company for the development and exploitation of such Project IPRs [and Products] [in respect of any disease indication] [in the Field] [in the relevant countries] [in any country], which includes discretion to make any and all decisions (in consultation with the Company) regarding the negotiation, acceptance and conclusion of terms for any agreement regarding the development and exploitation of the Project IPRs [and Products] [in respect of that disease indication] [in the Field] (including development and exploitation by way of licence, sale, assignment, materials transfer or other transfer of rights), as well as any transaction which involves placing such unexploited Project IPRs into a separate corporate vehicle) [in that country] [in relevant countries].

* 1. If Wellcome exercises its right to exploit on behalf of the Company under Clause 14.4: within [three (3) months] of receipt of Wellcome’s written notice exercising its right to exploit, the Company shall:
		1. license or assign (in good faith and on a sublicensable basis and on the financial terms set out at Clause 14.9) the Project IPRs [and Products] [in respect of any disease indication] [in the Field] [in the relevant countries] [in any country] to Wellcome or its nominee and provide Wellcome or its nominee with access to any associated data, documents, materials, master files, regulatory approvals or information as required for Wellcome or its nominee to develop and exploit the Project IPRs [and Products] [in respect of any disease indication] [in the Field] [in the relevant countries] [in any country];
		2. grant to Wellcome or its nominee a sublicensable licence to the Background IPRs to the extent that they are required to develop and exploit the Project IPRs [and Products] [in the Field] [in respect of any disease indication]. Any such licence grant shall be non-exclusive and free of charge other than for reasonable costs that are incurred in respect of necessary third-party licences; and
		3. transfer to Wellcome or its nominee any materials, data and know-how necessary or useful to Wellcome or its nominee to enable development and manufacture of [Products] [in the Field] [in respect of any disease indication]. Any such transfer shall be free of charge other than for reasonable costs incurred in the transfer.
	2. In the event that the Parties acting in good faith are unable to agree the terms of the licences or assignments referred to at Clause [14.5] above within the [three (3) month] time period, any Party may refer the matter to an Expert for resolution in accordance with Clause 16.
	3. Where any Wellcome nominee referred to above is not acceptable to the Company (acting in good faith) on reasonable grounds (including commercial grounds), the Company shall notify Wellcome promptly in writing of the objection and the reasonable grounds, Wellcome shall not appoint such third party as its nominee and Wellcome shall propose an alternative nominee. Where the Parties are unable to agree suitable Wellcome nominees, any Party may refer the matter to an Expert for resolution in accordance with Clause 16.
	4. If Wellcome exercises its right to exploit the Company under Clause [14.4], the Company shall pass to Wellcome immediately any or all exploitation opportunities [in the applicable indication] [in the Field] in [the relevant [countries] [in any country] that it becomes aware of from time to time in connection with the Project IPRs [and Products] [in the Field]. The Company further undertakes not to engage in any activities (including in relation to the Background IPRs) that could reasonably lead to the loss of an exploitation opportunity in [a] [the] [relevant] country [in the applicable indication] [in the Field] without the prior written consent of Wellcome.
	5. Where Wellcome exercises its right to exploit under Clause [14.4], Wellcome shall share Project Revenues and Equity Holdings received in respect of exploitation of the Project IPRs [and Product] [in the applicable indication] [in the Field] 50:50 Trust: the Company after reimbursement of Wellcome Direct Costs.
	6. The Company shall procure that the Principal Investigator and other members of its staff who contributed to the creation of Project IPRs will give all reasonable assistance to Wellcome in relation to the development and exploitation of the Project IPRs and (if applicable) the Background IPRs [and/or the Sideground IPRs], including transferring of know-how necessary or useful for the development and exploitation of the Project IPRs and Products [in the Field] [in any indication] to a third party licensee or corporate vehicle.
1. FURTHER FUNDING
	1. The Company undertakes not to seek, apply for or accept (whether by way of loan, grant or any other funding arrangement) without Wellcome’s prior written consent (such consent not to be unreasonably withheld) any other funding or support (whether in kind or otherwise) for the Project, whether commercial or non-commercial, for the duration of the Project. The Company is not restricted from raising general working capital provided that such funds are not specifically earmarked for the Project.
	2. If at any time the Company is seeking to obtain funding from Institutional Investors, the Company shall inform Wellcome in good time prior to entering into any term sheet and Wellcome will discuss with the Company the possibility of repayment of the Loan (and Accrued Interest if relevant) or conversion prior to completion of such investment. The Conversion Price shall not be subject to amendment in such circumstances.
	3. [If the Project is successful, the Company grants Wellcome a right of first refusal to further fund the development of the Background IPRs, Project IPRs [and Products] [in the Field] [in any indication]. To this end, where the Company requires funding for such development, the Company shall submit an application for funding to Wellcome in accordance with Wellcome’s then current policies and procedures. The right of first refusal shall lapse if Wellcome declines to fund following consideration of the Company’s application for funding via Wellcome’s then current application process and in accordance with Wellcome’s then current funding time frame for consideration of such applications.]
2. EXPERT DETERMINATION
	1. Where any Clause of this Agreement provides for a matter to be determined by an expert, the expert appointed to resolve such matter (the "**Expert**") shall be an independent expert whose appointment is agreed between the Parties.
	2. If the Parties are unable to agree on an Expert within ten (10) Business Days of either Party serving details of a suggested expert on the other, either Party shall then be entitled to request thePresident for the time being of the Institute of Chartered Accountants in England and Wales to appoint an Expert of repute with appropriate qualifications, expertise, experience and skill in the issue in dispute
	3. The Expert shall be required to deliver a notice setting out his/her determination within thirty (30) Business Days of her appointment. The Expert shall adopt a valuation method which he/she considers, in his/her absolute discretion, to be the most appropriate method for the matter upon which determination is required.
	4. The Parties shall be entitled to make submissions to the Expert and shall provide (or procure that others provide) the Expert with such assistance and documents as he/she shall reasonably require for the purposes of making his/her determination.
	5. The Parties shall provide each other with such reasonable information concerning the affairs of the Company as will enable them to make submissions under Clause 16.4.
	6. The Expert shall act as an expert and not as an arbitrator and his/her written opinion on the matters referred to him/her shall, save for manifest error, be final and binding.
	7. The costs of any reference to an Expert under Clause 16 shall be borne by the Parties equally unless the Expert shall decide otherwise in which case the costs shall be borne by the Parties in the proportions indicated by the Expert.
3. WAIVER
	1. No Party shall be deemed to have waived any of its rights or remedies under this Agreement unless the waiver is expressly made in writing and signed by a duly authorised representative of that Party. In particular, no delay or failure of any Party in exercising or enforcing any of its rights or remedies under this Agreement shall operate as a waiver of those rights or remedies nor shall any single or partial exercise or enforcement of any right or remedy by any Party preclude or impair any other exercise or enforcement of that right or remedy by that Party.
4. ENTIRE AGREEMENT/VARIATIONS
	1. This Agreement, together with the Application and any agreement entered into pursuant to the Agreement constitutes the entire agreement and understanding between the Parties relating to the matters dealt with in this Agreement and supersedes all prior discussions and agreements covering the subject matter of this Agreement.
	2. The Agreement may only be amended by agreement of the Parties in writing.
5. ANNOUNCEMENTS
	1. Except as set out in this Agreement or as required by law or any competent regulatory authority, no announcement concerning this Agreement or its subject matter shall be made by either Party without the prior written approval of the other Party.
	2. Wellcome is permitted to publish a summary description of the Project including: the name of the Principal Investigator, the name of the Company, the title of the Project, the maximum amount of the Facility and the following description of the Project:

[Company to suggest description of Project for publication on Wellcome website and other Wellcome materials]

* 1. Wellcome’s contribution must be acknowledged in all scientific publications concerning the Project, quoting the Award reference number [insert].
	2. A copy of the final manuscript of all research publications that relate to the Project must be deposited into PubMed Central (or Europe PubMed Central) upon acceptance for publication, to be made freely available as soon as possible and in any event no later than six (6) months after the journal publisher’s official date of final publication.
1. CONFIDENTIALITY
	1. The Parties shall keep confidential and ensure that their respective officers, employees, consultants, agents and professional and other advisers shall keep confidential any information:
		1. relating to the customers, business, assets or affairs of the Company;
		2. relating to the customers, business, assets or affairs of Wellcome; or
		3. which relates to the Project or the contents of this Agreement or any agreement or arrangement entered into pursuant to this Agreement (the “**Confidential Information**”).
	2. Save as set out below, neither Party may use for its own business purposes or disclose to any third party any Confidential Information of the other Party without the prior consent of the Party to whom the Confidential Information relates.
	3. In recognition of Wellcome’s role of a major funder of medical research, nothing in this Clause 20 shall prevent Wellcome from using the Confidential Information, or comparing the Confidential Information to information already in its possession, in each case solely to inform its internal assessment of other applications made to it for funding in furtherance of its charitable mission.
	4. Confidential Information does not include:
		1. information which is or becomes publicly available (otherwise than as a result of a breach of this Agreement or any other agreement between the Parties);
		2. information which is independently developed by the relevant Party or acquired from a third party, to the extent that it is acquired with the right to disclose it;
		3. information which was lawfully in the possession of the relevant Party prior to or on the Effective Date, free of any restriction on disclosure as can be shown by that Party’s written records or other reasonable evidence;
		4. the disclosure of information to the extent required to be disclosed by law, including any requirements for disclosure under the Freedom of Information Act 2000 or any court of competent jurisdiction, any governmental official, any tax or regulatory authority (including any Recognised Investment Exchange and the Panel on Takeovers and Mergers) or any binding judgement, order or requirement of any other competent authority;
		5. the disclosure to a Party’s professional advisers or to Wellcome’s Site Visit Group of information reasonably required to be disclosed for purposes relating to this Agreement;
		6. any announcement made, or information provided in relation to the Company with the approval of Wellcome in accordance with Clause 19; and
		7. the disclosure of information by Wellcome for the purposes of:
			1. publishing summary details of awards made by Wellcome funding and in accordance with Clause 19.2;
			2. [for the purpose of registering a clinical trial in accordance with the Wellcome Policies;]and
			3. Publishing summary details of the public healthcare benefit of Wellcome funding including [the number of] [doses of] Product] [in the applicable indication] [in the Field] made available;
	5. Each Party shall inform any officer, employee, consultant or agent or any professional or other adviser advising it in relation to matters relating to this Agreement, or to whom it provides Confidential Information, that such information is confidential and shall instruct them:
		1. to keep it confidential; and
		2. not to disclose it to any third party (other than those persons to whom it has already been or may be disclosed in accordance with the terms of this Agreement), provided that the disclosing Party shall remain responsible for any breach of Clause 20 by the person to whom that Confidential Information is disclosed.
	6. Without prejudice to any other rights or remedies which a Party may have, the Parties acknowledge and agree that damages would not be an adequate remedy for any breach of Clause 19 and the remedies of injunction, specific performance and other equitable relief are appropriate for any threatened or actual breach of any such provision.
2. NOTICES
	1. Any notice to be given pursuant to this Agreement shall be in writing in the English language and shall be delivered by overnight courier, by registered, recorded delivery or certified mail (postage prepaid) to the address Party set out below or such other address as a Party may from time to time designate by written notice to the other Party.
		1. **Address of Company**

[Address]
[Address]
[Address]

for the attention of: [Name]

* + 1. **Address of Wellcome**

Innovations Team
The Wellcome Trust Limited,
215 Euston Road
London NW1 2BE

for the attention of: The Operations Manager

with a copy to: InnovationsOperations@wellcome.ac.uk

* + 1. Any notice given pursuant to Clause 20.1 shall be deemed to have been received on the day of receipt, provided receipt occurs on a Business Day or otherwise on the next following Business Day.
	1. [Except for Safety Notices issued pursuant to Clause [11.7]], Email and fax are not valid methods of giving notice under this Agreement.
1. ASSIGNMENT
	1. No Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party.
2. SEVERANCE OF TERMS
	1. If any provision of this Agreement becomes invalid or unenforceable to any extent, the reminder of this Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law.
3. COSTS
	1. Each Party shall bear its own legal costs, legal fees and other expenses incurred in the preparation and execution of this Agreement.
4. FURTHER ASSURANCES
	1. Each Party shall perform such acts and execute such documents as be necessary or desirable to give effect to this Agreement.
5. GENERAL
	1. If any provisions of the memorandum of association, or the articles of association of the Company (or both) at any time conflict with any of the provisions of this Agreement, the provisions of this Agreement shall prevail.
	2. This Agreement may be executed in two or more counterparts but shall not be effective until both Parties have executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same instrument.
	3. A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.
6. GOVERNING LAW
	1. 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. Except as provided in Clause 16, the Parties irrevocably submit to the exclusive jurisdiction of the Courts of England, provided that nothing in this clause shall prevent either Party from seeking injunctive relief in any court of competent jurisdiction in respect of a breach or threatened breach of Clause 20 (Confidentiality).

# SCHEDULE 1: MILESTONES, TRANCHES OF LOAN AND PAYMENT SCHEDULE

**Milestones and Milestone Dates**

|  |  |  |
| --- | --- | --- |
| **Milestone** | **Description of Milestone** | **Milestone Date** |
| 1 |  | [X] months from Project Start Date |
| 2 |  | [X] months from Project Start Date |
| 3 |  | [X] months from Project Start Date |

**Payments**

| **Tranche** | **Amount of Advance** | **Released on** | **Instalments Payable**  |
| --- | --- | --- | --- |
| 1 | £ | Twenty (20) Business Days of receipt of a drawdown notice following the Effective Date pursuant to Clause [2.5] | [date]: [amount] |
| 2 | £ | Following the achievement of Milestone 1 in accordance with Clause [2.8] | [date]: [amount] |
| 3 | £ | Following the achievement of Milestone 2 in accordance with Clauses [2.8] | [date]: [amount] |
| 4 (Retained Amount) | £ | Achievement of Milestone [3] in accordance with Clause [2.8], receipt of an End of Award Report and an EASR acceptable to Wellcome and compliance with Wellcome’s Open Access policy in accordance with Clause [2.10] | [date]: [amount] |
| **Total** | £ | - | - |

# SCHEDULE 2: COSTS SCHEDULE

[Wellcome to insert]

# SCHEDULE 3: TREASURY POLICY

[Wellcome to insert - or delete]

# SCHEDULE 4: DRAWDOWN NOTICE 1

 [Company] Limited

[Address]

[Address]

[Address]

The Operations Manager
Technology Transfer Division
The Wellcome Trust Limited
Gibbs Building, 215 Euston Road
London NW1 2BE

[Date]

Dear Sirs

**The Convertible Loan Agreement made on [ ]** **20****[•****] between [Company] and The Wellcome Trust Limited as trustee of the Wellcome Trust (the “Loan Agreement”)**

The Loan Agreement sets out the terms and conditions upon which Wellcome is willing to provide funding to the Project entitled [title] to be undertaken by [Principal Investigator] of [Company].

We hereby give you irrevocable notice that, pursuant to Clause 2.4 of the Loan Agreement we wish to borrow [•] Pounds Sterling (£[•]) of the Facility Amount upon the terms and subject to the conditions of the Loan Agreement.

We confirm that each of the Loan Conditions is satisfied as at the date of this Letter and will continue to be satisfied as at the date of the proposed drawdown and enclose an amended Disclosure Letter.

Terms and expressions defined in the Loan Agreement shall have the same meanings in this Letter.

Yours faithfully

……………………………
For and on behalf of
**[Company]**

# SCHEDULE 5: DRAWDOWN NOTICE 2

 [Company] Limited

[Address]

[Address]

[Address]

The Operations Manager
Technology Transfer Division
The Wellcome Trust Limited
Gibbs Building 215 Euston Road
London NW1 2BE

[Date]

Dear Sirs

**The Convertible Loan Agreement made on [ ]** **20****[•****] between [Company] and The Wellcome Trust Limited as trustee of the Wellcome Trust (the “Loan Agreement”)**

The Loan Agreement sets out the terms and conditions upon which Wellcome is willing to provide funding to the Project entitled [title] to be undertaken by [Principal Investigator] of [Company].

We refer to Milestone [number] as described in Schedule 1 of the Loan Agreement and hereby confirm the completion of the achievement of such Milestone. A report detailing achievement of Milestone [number] [is attached to this letter] [has been provided to Wellcome]. Please confirm that Milestone [number] has been achieved to your reasonable satisfaction and that we may proceed to drawdown [●] Pounds Sterling (£[●]) in respect of the [number] tranche of the Facility in the instalments set out at Schedule 1 of the Loan Agreement.

Subject to receipt of your confirmation that we may proceed to drawdown the Facility, we hereby give you irrevocable notice that, pursuant to the Loan Agreement we wish to borrow [●] Pounds Sterling (£[●]) of the Facility Amount upon the terms and subject to the conditions of the Loan Agreement.

We confirm that each of the Loan Conditions is satisfied as at the date of this Letter and will continue to be satisfied as at the date of the proposed drawdown and enclose an amended Disclosure Letter.

Terms and expressions defined in the Loan Agreement shall have the same meanings in this Letter.

Yours faithfully

……………………………
For and on behalf of
**[Company]**

# SCHEDULE 6: COMPANY DETAILS

**Details of [Company]**

|  |  |  |
| --- | --- | --- |
|  | Company Number:  | [ ] |
|  | Date and Place of Incorporation: | [ ] |
|  | Share Capital:  |  |
|  | (i) | Authorised:  | [ ] |
|  | (ii) | Issued:  | [ ] |
|  | Registered Holders:  | [ ] (attach list if necessary) |
|  | Registered Office:  | [ ] |
|  | Directors:  | [ ] |
|  | Secretary:  | [ ] (if any) |
|  | Accounting Reference Date:  | [ ] |
|  | Holding company(ies): | [ ] |
|  | Subsidiaries/other group companies | [ ] |

SCHEDULE 7: CONVERSION PRICE AND CONVERSION SHARES

1. The Conversion Price and Conversion Shares shall be determined as follows:
	1. **Conversion at or following a Subsequent Financing**

(a) In the case of conversion at or following a Subsequent Financing the Conversion Price shall be a price per share which is at a discount of twenty per cent (20%) to the share price at the Company’s Subsequent Financing.

(b)  In the case of conversion pursuant to paragraph 1.1(a) above, the Conversion Shares shall be shares of the Company having the rights, preferences and privileges of the series of preferred shares issued by the Company in the Company’s Subsequent Financing (and if no preferred shares have been issued or if more than one class of shares is issued, the class having the most beneficial rights).

* 1. **Conversion on Listing where no Subsequent Financing has taken place**

(a)  In the case of conversion immediately prior to a Listing, where no Subsequent Financing has taken place prior to the date of such Listing, the Conversion Price shall be a price per share which is at a discount of twenty per cent (20%) to the share price at which the Listing is intended to take place (or, where the Company’s broker and/or nominated adviser fixes a range of possible share prices for the Listing in advance, a twenty percent (20%) discount to the lowest end of such price range).

(b) In such case, the Conversion Shares shall be ordinary shares in the Company or such shares of the Company which are to be listed which have the most beneficial rights as at the date of Wellcome’s request for conversion.

* 1. **Conversion on Sale where no Subsequent Financing has taken place**

(a) In the case of conversion immediately prior to a Sale, where no Subsequent Financing has taken place prior to the date of such Sale, the Conversion Price shall be a price per share which is at a discount of twenty per cent (20%) to either the price per share at which the acquirer will purchase the shares of the Company, or the total price to be paid for the business and undertaking of the Company and its Subsidiaries divided by the number of shares then issued, as the case may be.

(b) In the case of conversion pursuant to paragraph 1.3(a) above, the Conversion Shares shall be a separate series of shares of the Company having the same rights, preferences and privileges as the class of shares issued by the Company with the most beneficial rights as at the date of such Sale.

* 1. **Conversion where no Subsequent Financing, Listing or Sale has taken place**

(a)  If a Sale or Listing has not previously occurred and the Company has not carried out a Subsequent Financing before the date on which Wellcome wishes to convert the Loan pursuant to this Agreement, the Conversion Price shall be a price per share which is at a discount of twenty per cent (20%) to the Fair Value of the Company as a going concern as at the intended conversion date divided by the number of shares then issued (without regard as to whether such shares represent a minority or majority interest). The Fair Value of the Company shall be as agreed between the Parties or if the Parties are unable to agree a Fair Value within 30 Business Days of Wellcome notifying the Company that it wishes to convert the Loan, the Fair Value shall be determined by an Expert appointed under Clause 16;

(b)  In the case of conversion pursuant to paragraph 1.4(a) above, the Conversion Shares shall be the class of shares currently in issue by the Company having the most beneficial rights as at the date of Wellcome’s request for conversion.

# SCHEDULE 8: PROJECT PLAN

[Wellcome to insert]

# SCHEDULE 9: PROJECT START DATE LETTER

***[Schedule to be deleted if Project Start Date is agreed on signature]***

[Company]

[Address]

[Address]

[Address]

The Operations Manager

Technology Transfer Division

The Wellcome Trust Limited

Gibbs Building, 215 Euston Road

London NW1 2BE

[Date]

Dear Sirs

**The Convertible Loan Agreement made on [date] 20[ ] between [Company] and the Wellcome Trust Limited as Trustee of the Wellcome Trust (the “Loan Agreement”)**

We refer to the Project to be undertaken by [Principal Investigator] entitled “[title]”. We are writing to confirm, pursuant to the Loan Agreement, that the Project Start Date of the Project has been agreed; the Project Start Date shall be [insert Project Start Date].

Terms and expression defined in the Loan Agreement shall have the same meanings in this Letter.

………………………..

For and on behalf of [Company]

# SCHEDULE 10: APPLICATION

[Wellcome to insert]

**IN WITNESS** of which this Agreement has been signed as follows:

Signed for and on behalf of )

**THE WELLCOME TRUST** )

**LIMITED as trustee of** )

**The Wellcome Trust** )

by its authorised signatory )

 Authorised Signatory

 Date:

Signed for and on behalf of )

**[COMPANY]** )

**LIMITED** )

 ) Director/Secretary

 )

 Date:

 Director/Secretary

 Date:

1. Clause 11 sets out various Project monitoring options. Wellcome needs to determine the most appropriate Project monitoring options for the particular Project. Depending on the Project monitoring options selected, the definition of Annual Meeting may need to be deleted. [↑](#footnote-ref-1)
2. Insert if the Company has appointed auditors. [↑](#footnote-ref-2)
3. Insert definition where the Project includes a clinical trial [↑](#footnote-ref-3)
4. Insert definition where the Project includes a clinical trial [↑](#footnote-ref-4)
5. Insert definition where the funded Project includes a clinical trial [↑](#footnote-ref-5)
6. Insert where the funded Project includes a clinical trial [↑](#footnote-ref-6)
7. Insert, delete or amend definition as necessary for the Company Diligence Obligations (See Clause 14.1) to reflect the funded Project. [↑](#footnote-ref-7)
8. Insert definition if required for Company Diligence Obligations and definition of Reasonable Efforts. [↑](#footnote-ref-8)
9. Amend as appropriate for funded Project. [↑](#footnote-ref-9)
10. Insert where the funded Project includes a clinical trial. [↑](#footnote-ref-10)
11. Depending on which options in the Agreement are used these references may need to be updated or amended. [↑](#footnote-ref-11)
12. Delete if the Company has not appointed external auditors. [↑](#footnote-ref-12)
13. Include relevant cross-references to reflect final agreement. [↑](#footnote-ref-13)
14. Insert where the Project includes a Clinical Trial. [↑](#footnote-ref-14)
15. Please refer to Innovations: Commercial points in Agreements Sections 4 b and 5. These Sections set out various options to ensure equitable access to the results of Wellcome-funded projects. Some options are set out in this Agreement but they may not be the most appropriate structure to ensure equitable access for the particular Project being funded. Implementation of equitable access may also need to be considered. [↑](#footnote-ref-15)
16. On-going monitoring reporting needs to be in place and to survive conversion of the Loan into Conversion Shares and/or repayment so that Innovations receives data that can be used to measure public healthcare impact/benefit of Wellcome funding. [↑](#footnote-ref-16)