

Barts Charity funded Intellectual Property (IP) Policy

At Barts Charity, we aim to enable life-changing improvements to health for the people of East London.

We are a charity with its roots in East London, dedicated to supporting improvements to healthcare and transformative research for local health benefit. We work in partnership with Barts Health NHS Trust, and local Higher Education Institutes (Queen Mary, University London, and City St George's, University of London) who can help us achieve our goals and maximise our impact.

1. Barts Charity expectations from the Grant Holders and Administering Organisations we fund relating to Intellectual Property

Barts Charity supports research and innovation to improve health, **not** to generate a financial return. As a charity, we work to ensure that the results of the projects we fund through our Grant Programme are applied for the public good. This includes creating an environment that enables and incentivises Grant Holders to develop innovative products and technologies that lead to health improvements.

We expect our Grant Holders to manage project outputs in whatever way will achieve the greatest health and public benefit. This may involve either:

- making outputs freely available to others (open access), or
- using intellectual property (IP) as a tool to protect and commercialise them.

Barts Charity expects Grant Holders and Administering Organisations to manage project outputs in a way that will achieve the greatest public benefit, in compliance with the [Grant Conditions](#) (see clause 11). The methods used to generate impact may vary, but the chosen method must be based on an assessment of which one will lead to the greatest public benefit.

Anyone applying for Barts Charity funding must consider their approach to managing and sharing anticipated outputs – for example, patentable inventions, large databases, substantial pieces of software, or new project materials, such as antibodies, cell lines or animal models – at the grant application stage an outputs management plan which will be reviewed as part of our due diligence and grant review process where applicable.

Grant Holders (and their employers) should take a dynamic approach to outputs management. Outputs management plans must be reviewed throughout the project life cycle – as IP is created and developed, and as new opportunities for commercialisation or making outputs open access arise.

Barts Charity does not seek to directly own or co-own IP arising from its funding. IP created by Barts Charity-funded Grant Holders is expected to be owned by the Administering Organisation (apart from copyright in articles which may be retained by the authors) in line with clauses 9.2 and 9.3 of the Grant Conditions.

If the Administering Organisation no longer wishes to maintain rights in arising IP, they can offer this to the Grant Holder in line with their organisational policies, subject to the Grant Holder being bound by the obligations contained within this policy and the Barts Charity Grant Conditions.

Barts Charity-funded IP must not be used solely to block further research and development by others, either actively or passively. It is expected that registered IP is abandoned if there is no credible plan to commercialise it and if it presents a barrier to use for further development by others.

Grant Holders are encouraged to publish the outcomes from Barts Charity funded projects, where possible, and ensure it is freely disseminated through scholarly journals and other means and made available in accordance with clause 7.2 of the Grant Conditions.

2. Collaborating with others

The Administering Organisation and Grant Holder must ensure that any project collaborations comply with clauses 9.2 and 9.3 of the Grant Conditions in relation to the ownership and protection of IP. They must make the collaborator aware of Barts Charity's IP policy and how this may apply to joint IP created with a collaborator.

If the Grant Holder has relationships with industrial partners, they and the Administering Organisation must assess if they have a conflict that will need to be disclosed and managed, examples include other (commercially funded) project collaborations or positions as consultants, scientific advisors, or directors.

3. How to identify and protect IP

Grant Holders must immediately tell the Administering Organisation's research/technology transfer/business development office about the creation of any significant project outputs (for example, potentially patentable inventions, new software, or new materials such as antibodies or cell lines).

Grant Holders must work closely with the Administering Organisation to determine whether to use IP as a tool to commercialise such outputs, or whether to instead make them freely available through open access. If a significant project output has been created, and the Grant Holder and Administering Organisation have determined that the commercialisation of IP is the optimal route to deliver health benefit, details must be included in the Administering Organisation's annual **IP & Commercialisation report** to Barts Charity (see section 8 below).

The costs of protecting patents and other registered IP rights can be recovered by the Administering Organisation as a direct cost from any subsequent revenue sharing with Barts Charity (see section 6 below).

4. Consent to assigning or licencing IP

In accordance with Barts Charity's Grants Conditions, all Administering Organisations are required to request consent before IP arising from the work pursuant to a Grant can be assigned or licenced.

Under this IP Policy, Barts Charity will provide a **consent waiver** based on a framework of assurance and process of annual **IP & Commercialisation reporting** (see section 8 for more detail) from Administering Organisations that covers invention disclosures, arising IP, new collaborations or partnerships, income received (including in kind), and revenue due to Barts Charity. This will also apply to any equity due to Barts Charity, for example where the Administering Organisation receives an equity holding in a spin-out.

Under the waiver, consent will be provided retrospectively.

For the consent waiver to apply, the Administering Organisation must:

- adhere to this IP policy.
- report its Barts Charity IP-related activities on an annual basis.
- comply promptly with requests for additional information as appropriate.

This waiver arrangement will be kept under review, and it may be modified or withdrawn at any time. If the waiver is withdrawn, all future IP transactions by that Organisation **will** need Barts Charity prior written consent from Barts Charity, until such point that Barts Charity consider there is sufficient reassurance to reintroduce the consent waiver.

In some cases, individual projects may be exempted from the consent waiver. In cases where prior consent to commercialisation will still be required, this will be stated in the relevant Award letter. Before entering into any commercialisation agreement, please check additional conditions stipulated in the Award letter over and above the standard Grant Conditions.

5. Pipeline arrangements

Pipeline arrangements are where a company receives or pays for the right of first refusal to research outputs from a university lab, department, or even an entire organisation.

This may have the positive impact of bringing in funding to an organisation, but it essentially forward-sells the IP. This conflicts with our approach to IP, which is that the organisation focuses

(on a case-by-case basis) on maximising the potential public health impact when it commercialises Barts Charity-funded IP.

As a result, the organisation should not enter such an arrangement unless:

- it is appropriately limited in time and scope
- the third party is clearly the most suitable commercialisation partner
- the organisation receives an appropriate return.

6. Revenue Sharing

Barts Charity has an obligation under charity law to ensure that private benefits arising from its funding, such as wealth creation, are acceptable, i.e., incidental to public benefit. To meet this obligation, Barts Charity typically take a share of any revenue and equity the Grant Holders and Administering Organisations generate from commercialising Barts Charity-funded IP. This income can then be reapplied to support the Barts Charity charitable objectives.

To strike a balance between incentivising translation and meeting our charitable obligations, Barts Charity has chosen to simplify our default revenue and equity share in any arising revenue from commercialisation of activity under a Barts Charity Grant to a flat rate of 25 per cent. Where this relates to an equity share, this is typically held by the relevant Administering Organisation and then treated as revenue when the Organisation sells the Barts Charity shares along with its own. For the avoidance of doubt, any inventor reward or contribution towards the technology transfer or Commercialisation office running costs ('top-slice') shall not be deducted from, nor affect, the amount of Barts Charity Portion of Net Income.

If the Administering Organisation enters into one or more commercialisation agreements related to Barts Charity-funded IP, each transaction should be reported in the annual **IP & Commercialisation report** (See section 8 below). Under the consent waiver, as part of providing retrospective consent, the Administering Organisation and Barts Charity will then enter into a Revenue and Equity Sharing Agreement (Appendix 2).

7. Revenue Retention

Revenue amounts payable to Barts Charity must be declared in the annual **IP & Commercialisation report**. As part of this reporting, the Administering Organisation can apply to retain the Barts Charity revenue share to support healthcare-related translational and innovation projects in their organisation. See section 8 below for more detail.

Organisations can only apply to retain the Barts Charity share of revenue received in the year covered by the reporting period. Further detail of terms and conditions that apply to all revenue retention requests will be provided to Administering Organisations.

The retained revenue can be spent on any projects that support healthcare-related translational and innovation activities and does not need to be spent on Barts Charity-funded projects or linked to the original project that generated the revenue, as long as the Administering Organisations application to retain revenue is successful.

Revenue retention from individual transactions can be aggregated for proposed use to a single project or multiple projects. As much detail as possible on the proposed use of the retained funds needs to be provided. If a change in the proposed use of retained funds is required at any point following a successful application, the Administering Organisation should inform Barts Charity to seek approval before doing so.

Retained revenue must be at least *committed* within one year of the revenue retention request being approved and the Administering Organisation will need to report on spend as part of the annual **IP & Commercialisation report** from Administering Organisations.

If large revenue amounts are expected or anticipated, especially those which are unusual in the Administering Organisation's history of translational activities, it is requested these are brought to Barts Charity's attention as soon as possible, and prior to submitting a revenue retention request. This will help shape any application to retain revenue and reduce the risk of an unsuccessful application.

Depending on the proposal, Barts Charity may grant a longer spend period. This is at Barts Charity's discretion and would be an exception. We reserve the right to:

- enforce limits on retained amounts and spend periods, for example, if we have concerns about an Organisation's ability to use the revenues effectively.
- reject exceptionally large amounts (this will depend on what is unusually large for the organisation in question, based on their history of translational activity).
- decline a request for any reason, including but not limited to, deploying the funds to further other areas of Barts Charity's strategic objectives.

Any retained revenue or equity will be subject to the Barts Charity Grant Conditions.

8. The annual IP & commercialisation report and revenue retention requests

Every Administering Organisation that holds a grant from Barts Charity needs to complete and submit a **IP & Commercialisation report** once a year to Barts Charity, covering all its Barts Charity-funded grants (unless other bespoke reporting conditions apply, which will be specified in the Award Letter). The report template will be provided to Administering Organisations by Barts Charity.

This should be received by Barts Charity from the Administering Organisation by 30 April for the period covering 1 April – 31 March of the preceding year.

The annual **IP & Commercialisation report** must:

- cover all IP-related activity for the previous year relating to all Barts Charity-funded grants and must detail the related Barts Charity grant reference, Grant Holder and Title of the grant.
- include unredacted copies of any commercialisation agreements relevant to all IP-related activity that have been entered into as stipulated by the Grant Conditions. Further guidance is provided in Appendix 1: Expectations for Commercialisation Agreements (Transactions).
- be submitted, even if only to report that there has not been any IP-related activity.

If any new commercialisation agreements have been reported, the Administering Organisation is then required to enter into a Revenue Sharing Agreement between the Administering Organisation and Barts Charity for each transaction reported based on the standard template in Appendix 2. Retrospective consent for the transaction and confirmation and draft of the Revenue Sharing Agreement for the Administering Organisation to enter into will generally be provided within two months of submission of the annual **IP & Commercialisation report**.

It is the Administering Organisation's responsibility to ensure that all information contained in the report is accurate to the best of their knowledge.

Aggregate amounts of revenue share payable to Barts Charity must also be declared annually in this report. If the Administering Organisation wishes to apply to retain any Barts Charity revenue share, they must:

- submit the request to retain revenue as part of the annual **IP & Commercialisation report** to Barts Charity.
- comply with requests for additional information to allow the request to be assessed.
- report on the use of any previously retained funds from prior years.

Appendix 1: Expectations for Commercialisation Agreements (Transactions)

Any IP transactions must be consistent with our guidance on IP commercialisation. In particular, the driving factor in the negotiation of any such agreement should be maximising public benefit toward the potential for health impact, not revenue generation. Barts Charity expects Administering Organisations to include provisions in commercialisation agreements to maximise the impact and make the technology broadly applicable in line with the Barts Charity Strategy and Vision (e.g., lead to life changing improvements to health for the people of East London). The following list includes some of the key issues that we expect to see addressed in commercialisation agreements. It is not intended to be an exhaustive list and it will depend very much on the circumstances of the particular IP and the chosen commercialisation route.

Resources and expertise of the proposed commercialisation partner

The proposed commercialisation partner should have the necessary expertise and adequate resources to exploit Barts Charity-funded IP. For example, to be able to take a new drug through the necessary regulatory process to the marketplace. This does not mean that the proposed partner has to have all necessary expertise and resource for all stages of commercialisation at the date of consent, but the commercialisation plan must be realistic.

For example, it may be prudent to:

- set a deadline within which a new spin-out company has to raise additional funds or enter into a further commercialisation deal, without which the IP reverts to the organisation.
- provide for IP to revert on insolvency to the extent that is legally possible.

Diligence obligations

The terms of an agreement commercialising Barts Charity-funded IP should place appropriately worded diligence obligations on the commercialisation partner to make sure:

- suitable resources are devoted.
- development is not side-lined or shelved if commercial priorities change.

For example, the IP may revert to the organisation if diligence obligations are not complied with.

Step-in rights on IP

If the Organisation gives responsibility to the commercialisation partner for filing, prosecuting, and maintaining Barts Charity-funded IP and the partner fails to do so adequately, or decides to abandon a piece of registered IP, the organisation should retain the right to take back that responsibility at its own cost.

Appropriate financial return

We will not offer guidance for the amount of return that an organisation should seek to get from commercialisation, however we will check that the return is not obviously disproportionate (in either direction) to the organisation's contribution. This is to ensure that, as required by charity law, the private benefit to the commercialisation partner is no more than incidental to public benefit arising from the commercialisation of Barts Charity-funded IP (through the improvement of human health and contributions back to charitable funds).

Project licence reserved for the Organisation and Grant Holders.

We expect that the Organisation will reserve the right to continue using Barts Charity-funded IP for academic project and teaching so that its Grant Holders' careers are not restricted. This should be sub-licensable/transferable if the Grant Holder changes organisation.

Publications

Any delays on publications by the organisation or its Grant Holders should be limited to a reasonable time period (typically three months, maximum six months) and only to:

- allow for filing of new IP.
- remove information that is genuinely confidential to the commercial party.

Appropriate exclusivity

Where an Organisation wishes to grant an exclusive licence to a commercial third party, we expect it to evaluate whether exclusivity is the most appropriate way of achieving public benefit. We recognise that exclusivity is often required to attract the investment necessary to successfully commercialise Barts Charity-funded IP. However, in cases where Barts Charity-funded IP underlies a new research field or could act as a fundamental platform for further important work, the public benefit may be better served by a series of non-exclusive or co-exclusive licences to avoid giving one party a blocking position.

Access provisions to address commercialisation agreements.

We encourage Organisations to consider including provisions in commercialisation agreements which specifically consider access to life-changing improvements to health for the people of East London.

Pipeline arrangements.

Pipeline arrangements prevent the Organisation or Barts Charity from assessing, on a case-by-case basis, the most appropriate way to commercialise Barts Charity-funded IP to achieve public benefit. As a result, the Organisation should not enter such an arrangement unless:

- it is appropriately limited in time and scope.

- the third party is clearly the most suitable commercialisation partner.
- the organisation receives an appropriate return.

Appendix 2 – Barts Charity Standard Revenue & Equity Sharing Agreement

DATED []

**REVENUE AND EQUITY SHARING
AGREEMENT**

BETWEEN

(1) []

and

(2) BARTS CHARITY

BETWEEN:

1. [] a research institute whose administrative office is at [] (“**ORGANISATION**”); and
2. **BARTS CHARITY**, incorporated and registered in England and Wales with company number 07168381 whose registered office is at 12 Cock Lane London EC1A 9BU (“**BARTS CHARITY**”).

WHEREAS:

- A. BARTS CHARITY awarded a grant to ORGANISATION to fund a project entitled “[]” under award number [] (the “**Barts Charity-funded Project**”).
- B. The Barts Charity-funded Project led to the creation of certain intellectual property rights (“**Barts Charity-funded IP**”) as further defined in this Agreement which ORGANISATION wishes to commercialise.
- C. In particular, ORGANISATION wishes to commercialise the Barts Charity-funded IP in accordance with a transaction (“the **Commercialisation Agreement**”) as further defined in this Agreement.
- D. To facilitate management, development, and commercialisation of this Barts Charity-funded IP’ the Parties have agreed that its commercialisation shall be undertaken in accordance with the terms of the **Commercialisation Agreement** and this Agreement.

IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

In this Agreement:

- 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;
- 1.2 “**Barts Charity-funded IP**” means [list of patents / other rights or list in an Appendix];
- 1.3 “**Barts Charity Portion**” shall be as set in Clause 2.2;
- 1.4 “**Commercialisation Agreement**” means [details of the relevant licence or option];
- 1.5 “**Control**” means the direct or indirect ownership of more than fifty per cent (50%) of the outstanding voting securities of an entity, or the right to receive more than fifty per cent (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;

1.6 “**Direct Costs**” means any direct costs and expenses incurred or allowed from time to time in accordance with this Agreement by or for the account of the ORGANISATION or its Affiliate technology transfer company in prosecuting, maintaining, enforcing, or defending any of Barts Charity-funded IP rights, including without limitation:

- (a) all reasonable legal and other professional fees and charges; and
- (b) official filing, prosecution, maintenance, and renewal fees

For the avoidance of doubt, Direct Costs excludes any amount allocated in the Barts Charity-funded Project for the payment of such costs and excludes any amount which ORGANISATION may agree to pay to any person who contributed to the creation of the Barts Charity-funded IP, and ORGANISATION shall be responsible for compensating such persons who contributed to the creation of any Barts Charity-funded IP as are deemed to be members of the ORGANISATION staff at the time of the creation of any relevant Barts Charity-funded IP in accordance with its own policies and codes of practice.

1.7 “**Effective Date**” means the date written at the top of the first page of this Agreement;

1.8 ‘**Equity**’ means the issuing of equity or any other interest (whether by way of debenture, warrant, security or otherwise) from time to time in any company in consideration of the commercialisation of the Barts Charity-funded IP;

1.9 “**Gross Income**” means any cash sums or any other consideration actually received by ORGANISATION or its Affiliate technology transfer company in respect of the commercialisation of the Barts Charity-funded IP, including the assignment or grant of a licence or an option in respect of any Barts Charity-funded IP rights, whether by way of royalties, licence fees or otherwise. For the avoidance of doubt, Gross Income shall include consideration received by way of royalties, signature fees, milestone payments, damages from successful enforcement of the Barts Charity-funded IP and the provision of premises or equipment but shall exclude any Equity or other interests (whether by way of debenture, warrant, security or otherwise) or monies paid specifically to fund the undertaking of a research programme. Where Gross Income is received other than in money the value of the Gross Income shall be determined by reference to the value of the goods, services, licence or other benefit to ORGANISATION or its Affiliate technology transfer company;

1.10 “**Net Income**” means Gross Income less:

- (a) any Direct Costs; and
- (b) any applicable taxes on Gross Income and Direct Costs;

- 1.11 “**Other Funder Portion**” shall be the portion of research grant funding received by ORGANISATION from third party funder(s), which directly contributed to the discovery and/or reduction to practice of the Barts Charity-funded IP as set in Clause 2.2.
- 1.12 “**Parties**” means the parties to this Agreement, or any of them, as the context may require and “**Party**” shall be interpreted accordingly; and
- 1.13 Capitalised terms in this Agreement shall be interpreted in accordance with the definitions as set out in the Funding Agreement or above. Where a capitalised term is defined in both this Agreement and the Funding Agreement, the definition in this Agreement shall apply.
- 1.14 References in this Agreement to any statutory provisions shall be construed as references to those provisions as respectively amended consolidated or re-enacted (whether before or after the Effective Date) from time to time and shall include any provisions of which they are consolidations or re-enactments (whether with or without amendment).
- 1.15 The Schedules and Recitals form part of this Agreement and any reference to this Agreement shall include the Schedules and Recitals.
- 1.16 In this Agreement:
- (a) the masculine gender shall include the feminine and neuter and the singular number shall include the plural and vice versa;
 - (b) references to persons shall include bodies corporate, unincorporated associations, partnerships, and individuals; and
 - (c) except where the contrary is stated, any reference in this Agreement to a Clause or Schedule is to a Clause of or Schedule to this Agreement, and any reference within a Clause or Schedule to a sub-Clause, paragraph or other sub-division is a reference to such sub-Clause, paragraph, or other sub-division so numbered or lettered in that Clause or Schedule.
- 1.17 The headings in this Agreement are inserted for convenience only and shall not affect the construction of the provision to which they relate.
- 1.18 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.

- 1.19 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.
- 1.20 Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.21 Reference to any statute, statutory instrument, regulation, by law or other requirement of English law and to any English legal term for any actions, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or doctrine shall, in respect of any jurisdiction other than England, be deemed to include that which most nearly approximates in that jurisdiction to the relevant English term.

2 CONSENT TO COMMERCIALISE BARTS CHARITY-FUNDED IP AND CALCULATION OF REVENUE SHARE

- 2.1 In consideration for ORGANISATION entering into the terms of this Revenue and Equity Sharing Agreement, BARTS CHARITY consents to the commercialisation of the Barts Charity-funded IP via the Commercialisation Agreement.
- 2.2 ORGANISATION and BARTS CHARITY hereby agree that in respect of Net Income from the Commercialisation Agreement, the Other Funder Portion shall be [x%] and the Barts Charity Portion shall be [100-x%]. BARTS CHARITY’s revenue share shall be twenty five percent (25%) of the Barts Charity Portion. For the avoidance of doubt, where no other third party funding has contributed to the Barts Charity-funded IP, the Barts Charity Portion shall be 100% of Net Income. For the further avoidance of doubt, Direct Costs shall be applied pro rata to both the Other Funder Portion and the Barts Charity Portion.
- 2.3 Where any Net Income is received by ORGANISATION as part of the consideration for the grant of rights which includes rights other than the Barts Charity-funded IP then the consideration shall be apportioned by ORGANISATION between, on the one hand, the Barts Charity-funded IP, and on the other hand, any other rights granted, in such manner as is fair and reasonable.
- 2.4 If Net Income includes consideration other than cash, ORGANISATION shall pay to BARTS CHARITY an amount in cash as required to satisfy the Barts Charity Portion calculated in accordance with Clause 2.2.

2.5 Where rights to take Equity are received, ORGANISATION shall hold the Equity on BARTS CHARITY's behalf and share any proceeds received from the Equity (dividends and share sale receipts) in the following proportions: ORGANISATION 75% (seventy-five per cent) and BARTS CHARITY 25% (twenty-five per cent).

2.6 For the avoidance of doubt, ORGANISATION shall be responsible for rewarding its employees out of the ORGANISATION Share of the Net Income or Equity in accordance with its own policies. Such reward (if any) shall not affect the amount of Barts Charity Portion of Net Income.

3 REIMBURSEMENT OF COSTS

3.1 Where Direct Costs incurred/allowed in a given accounting year exceed the Gross Income from commercialisation of the Barts Charity-funded IP for that year, then such excess costs shall be carried forward and offset against future Gross Income until such time as they have been fully recovered.

4 ACCOUNTING STATEMENTS AND PAYMENTS

4.1 Annually on or about 1st May each year, ORGANISATION shall prepare and send an accounting statement to BARTS CHARITY for the previous year ending 31st March. Such statement shall set out:

- (a) Gross Income received;
- (b) Net Income;
- (c) deductible Direct Costs and taxes; and
- (d) Barts Charity Portion

ORGANISATION shall send with the statement payment in sterling unless ORGANISATION is applying to retain the Barts Charity Portion in accordance with its annual consolidated IP report.

4.2 Where any revenue and expenditure in respect of the Barts Charity-funded IP is received or made in a currency other than sterling, the sterling equivalent of the sum shall be:

- (a) where such sum has been converted into sterling prior to preparation of the statements provided pursuant to Clause 4.1, the actual sterling sum on conversion; or
- (b) where such conversion has not taken place prior to preparation of the statements provided pursuant to Clause 4.1, calculated using the average of the buying and

selling rates quoted by HSBC Bank plc at the date the sum is received or paid by the Commercialising Party as applicable, or at such other date as such Party may reasonably specify having regard to the circumstances.

- 4.3 All payments due hereunder are exclusive of value added tax which shall, where applicable, be payable in addition, subject to receipt of a proper VAT invoice.
- 4.4 All payments due hereunder shall be made after deduction of any applicable income taxes or other withholding taxes required by law, and the paying party shall in respect of any such deduction furnish to the receiving party any certificate or other documentary evidence reasonably available to it in order to enable the receiving party to obtain any applicable relief from any double taxation on such payment.
- 4.5 In accordance with BARTS CHARITY's standard revenue share policy, ORGANISATION may apply to retain some or all of the aggregate amounts payable to BARTS CHARITY from the previous reporting year. ORGANISATION acknowledges that BARTS CHARITY will consider such applications on a case by case basis and subject to ORGANISATION demonstrating that such retained sums will be used by ORGANISATION to advance BARTS CHARITY's mission by supporting healthcare related translational and innovation projects within the ORGANISATION.
- 4.6 ORGANISATION shall keep such records as are reasonably necessary to enable a proper assessment to be made of the sums payable under this Clause 4 and the Direct Costs for at least six (6) years after the date in which such Direct Costs were incurred or Net Income received. ORGANISATION shall allow an independent accountant duly authorised on behalf of and at the expense of BARTS CHARITY to inspect those records to the extent that they relate to those sums at all reasonable times by prior written appointment, such appointment to be reasonably agreed and such assessment to be limited in frequency to not more than once in any year. Such accountant shall not disclose to any third party or use for any unauthorised purpose any information not relevant to the verification of the sums due.
- 4.7 BARTS CHARITY shall pay for the audit as well as its own legal expenses associated with enforcing its rights with respect to any payments due under this Agreement except where the audit reveals a discrepancy of five per cent (5%) or more of any sums paid or payable. Where the audit reveals a discrepancy of five per cent (5%) or more of any sums paid or payable, the audit shall be paid for by ORGANISATION together with the additional amount due (if any) together with the legal expenses of BARTS CHARITY associated with enforcing its rights with respect to any payments due under this Agreement.
- 4.8 If ORGANISATION fails to pay any amount payable by it 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 the rate equivalent to two per cent (2%) per annum above the three month LIBOR from time to time.

5 DURATION AND TERMINATION

- 5.1 This Agreement shall commence on the Effective Date and shall continue for whichever is the longer of:
- (a) the last to expire of any patent rights in respect of the Barts Charity-funded IP;
 - (b) the expiry of the Commercialisation Agreement; or
 - (c) the expiry of any payment obligation relating to the Barts Charity-funded IP.
- 5.2 Either Party ("**Terminating Party**") shall have the right to terminate this Agreement forthwith at any time upon giving written notice of termination to the other Party ("**Defaulting Party**"), upon the occurrence of any of the following events:
- (a) the Defaulting Party commits a breach of a material obligation set out in this Agreement which is not capable of remedy;
 - (b) the Defaulting Party commits a breach of a material obligation set out in this Agreement which is capable of remedy but has not been remedied within forty (40) Business Days of the receipt by it of a notice from the other Party identifying the breach and requiring its remedy;
 - (c) the Defaulting Party 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;
 - (d) a proposal is made or a nominee or supervisor is appointed for a composition in satisfaction of the debts of the Defaulting Party or a scheme or voluntary arrangement of its affairs within the meaning of the relevant bankruptcy or insolvency laws, or the Defaulting Party enters into any composition or voluntary arrangement for the benefit of its creditors, or proceedings are commenced in relation to the Defaulting Party under any law, regulation or procedure relating to the re-construction, deferment or re-adjustment of all or substantially all of the Defaulting Party's debts;
 - (e) the Defaulting Party takes any action, or any legal proceedings are started whether by a third party or not, for the purpose of the winding up or dissolution of the Defaulting Party, other than for a solvent reconstruction or amalgamation;
 - (f) the appointment of a liquidator, trustee, receiver, administrative receiver, receiver and manager, interim receiver custodian, sequestrator, administrator, or similar officer, in respect of all or a substantial part of the assets of the Defaulting Party;
 - (g) an effective resolution being passed for the winding-up or entering into administration (whether out of court or otherwise) of the Defaulting Party; and
 - (h) a distress, execution or other legal process being levied against all or substantially all of the assets of the Defaulting Party, and not being discharged or paid out in full within ten (10) Business Days of the commencement of each process.

6 GENERAL

- 6.1 This Agreement is in addition to BARTS CHARITY's standard grant conditions, which will continue to apply in respect of the Barts Charity-funded project. Should there be any conflict between this Agreement and BARTS CHARITY's standard grant conditions, then this Agreement shall prevail.
- 6.2 Nothing in this Agreement shall give rise to any partnership or the relationship of principal and agent between the Parties.
- 6.3 All notices and communications shall be in writing and addressed to the Parties at the relevant address stated at the beginning of this Agreement (or such other address as may be notified from time to time).
- 6.4 None of the rights or obligations under this Agreement may be assigned or transferred without the prior written consent of the other Party. This Agreement shall be binding on and endure for the benefit of the successors in title of the Parties.
- 6.5 No waiver of any breach or default under this Agreement or any of the terms herein shall be effective unless such waiver is in writing and has been signed by the Parties. No waiver of any such breach or default shall constitute a waiver of any other or subsequent breach or default.
- 6.6 If any provisions of this Agreement are held to be invalid, illegal, or unenforceable (in whole or in part) such provisions or parts shall to that extent be deemed not to form part of this Agreement but the remainder of this Agreement shall continue in full force and effect.
- 6.7 Each Party shall do and execute or arrange for the doing or executing of all acts, documents and things as may be necessary in order to implement this Agreement.
- 6.8 This Agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of this Agreement or its formation) shall be governed by and construed in accordance with the laws of England. The Parties irrevocably submit to the exclusive jurisdiction of the Courts of England.

IN WITNESS whereof the Parties or their duly authorised representatives have executed this Agreement on the date hereinbefore written.

Signed for and on behalf of
ORGANISATION

Signature:

Name:

Title:

Date:

Signed for and on behalf of **BARTS**
CHARITY

Signature:

Name:

Title:

Date: