

DATED [_____] 2005

- (1) THE WELLCOME TRUST LIMITED**
- (2) [COMPANY] LIMITED**
- (3) [FOUNDER NAME]**

CONVERTIBLE LOAN AGREEMENT

Bird & Bird
90 Fetter Lane
London EC4A 1JP
Tel: 020 7 415 6000
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Ref: NKM/CMF/WELTR.0002

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THIS AGREEMENT is made and entered into as of the [] day of [] 20[05]

BETWEEN:

- (1) **THE WELLCOME TRUST LIMITED** a company registered in England under number 2711000 as Trustee of the Wellcome Trust, a charity registered in England under number 210183, whose registered office is at 215 Euston Road, London NW1 2BE (the “**Trust**”); and
- (2) [] **LIMITED** a company registered in [England and Wales/Scotland] under number [] whose registered office is [Address] (the “**Company**”); and
- (3) [] of [Address] (the “**Founder**”).

RECITALS:

- (A) The Company is a company incorporated on [Date] in [England/Scotland] under the provisions of the Companies Act 1985, as a private company limited by shares, details of which are set out in Schedule 3.
- (B) At the date of this Agreement, the Company has an authorised share capital of [£•] divided into [•] Ordinary Shares of £[•] each of which [•] Ordinary Share has been issued fully paid and registered in the name[s] of the person[s] listed in Schedule 3.
- (C) In order to further its charitable objects, the Trust wishes to make a Programme Related Investment (PRI) by way of an unsecured convertible loan of a maximum amount of [• Sterling Pounds (£•)] to the Company to progress [*insert description of healthcare benefit*].

1. INTERPRETATIONS

In this Agreement, unless the context otherwise requires:

- 1.1 “**Accounts Date**” means [date];
- 1.2 “**Accrued Interest**” means interest payable and accrued in respect of the Loan as calculated in accordance with Clause [3.1];
- 1.3 “**Advance**” means the borrowing of the Facility by drawdown by the Company from time to time in accordance with Clause [2.6];
- 1.4 “**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;
- 1.5 “**Agreement**” means this agreement as may be amended in

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- accordance with the provisions of this agreement;
- 1.6 **“Anniversary Date”** means each anniversary of the Effective Date of this Agreement or, if such date is not a Business Day, the next following Business Day;
- 1.7 **“Audited Accounts”** means the audited balance sheet of the Company as at the end of the relevant financial year of the Company and the audited profit and loss account of the Company 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;
- 1.8 **“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;
- 1.9 **“Board”** means the board of directors of the Company from time to time;
- 1.10 **“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];
- 1.11 **“Business IPRs”** means the IPRs used or required by the Company in the operation of its business;
- 1.12 **“Business Plan”** means the Company’s business plan dated [date];
- 1.13 **“BVCA”** means the British Venture Capital Association or an overseas body equivalent to it;
- 1.14 **“Claim”** means any claim by the Trust for breach of any of the Warranties;
- 1.15 **“Companies Acts”** means Companies Act 1985, Companies Act 1989, Business Names Act 1985 and Enterprise Act 2002;
- 1.16 **“Connected Persons”** means a person connected with the Company or any director or any former director or any shareholder of the Company within the meaning of Section 839, Income and Corporation Taxes Act 1988
- 1.17 **“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 an other entity shall also be deemed to constitute Control;

- 1.18 **“Conversion Price”** means:
- (i) [in the case of conversion pursuant to Clause 4.1.1, a price per share of £●; or]

[in the case of conversion pursuant to Clause 4.1.1, a price per share which is at a discount of 20% to the share price at the next fund raising led by a member of the BVCA after the Effective Date; or]
 - (ii) in the case of a Listing under Clause 4.5, a price per share which is at a discount of 20% to the share price upon Listing; or
 - (iii) in the case of a Sale under Clause 4.5, a price per share which is at a discount of 20% to either the price per share at which the acquirer purchased the shares of the Company, or the total price 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).
- 1.19 **“Disclosure Letter”** means the disclosure letter dated the same date as this Agreement and as subsequently amended on each Anniversary Date and on the date of each Advance;
- 1.20 **“Drawdown Date”** means a Business Day on which an Advance is made available to the Company;
- 1.21 **“Drawdown Notice”** means the notice as detailed in Schedule 1 of this Agreement;
- 1.22 **“Drawdown Period”** means the period starting on the date of this Agreement and ending on the date which is the earlier of the Repayment Date or [48] months from the date of this Agreement;
- 1.23 **“Effective Date”** means the date of this Agreement as set out on page 1 of this Agreement;
- 1.24 **“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;
- 1.25 **“Event of Default”** means any event or circumstance more particularly described in Clause 8;
- 1.26 **“Facility”** means the loan facility made available by the Trust to the Company on the terms and conditions of this Agreement;
- 1.27 **“Facility Amount”** means the amount of the Facility as set out in Clause [2.3];
- 1.28 **“Gross Revenues”** means in any Year after the Effective Date all income received by the Company during that Year excluding all equity investment or money paid by way of a grant;
- 1.29 **“Group”** means, in relation to any Party, its Holding Companies, its Subsidiaries and the Subsidiaries of those Holding Companies;
- 1.30 **“Holding Company”** shall be construed in accordance with s736 Companies Act 1985 as amended;
- 1.31 **“IPRs”** means (i) patents, designs, trade marks and trade names (whether registered or unregistered), copyright and related rights, database rights, know-how and confidential information; (ii) all other intellectual property rights and similar or equivalent rights anywhere in the world which currently exist or are recognised in the future; and (iii) applications, extensions and renewals in relation to any such rights;
- 1.32 **“Licensed-In IPRs”** means all IPRs of a third party which are or have been used by the Company under the terms of any agreement, arrangement or understanding (including software licences) under which a third party permits the Company to use IPRs;
- 1.33 **“Listing”** means the admission of the equity share capital of the Company, or any part of it, to trading on the Official List of the London Stock Exchange, AIM, NASDAQ, the New York Stock Exchange, The American Stock Exchange or to any other Recognised Investment Exchange;
- 1.34 **“Loan”** means the aggregate principal amount of the Facility from time to time borrowed and outstanding under this Agreement;
- 1.35 **“Management** means the unaudited monthly management accounts

- Accounts”** of the Company for the period ending ●;
- 1.36 **“Milestone One”** means the achievement by the Company (to the reasonable satisfaction of the Trust) of Milestone One as described in Schedule 6;
- 1.37 **“Milestone Two”** means the achievement by the Company (to the reasonable satisfaction of the Trust) of Milestone Two as described in Schedule 6;
- 1.38 **“Milestone Three”** means the achievement by the Company (to the reasonable satisfaction of the Trust) of Milestone Three as described in Schedule 6;
- 1.39 **“Milestones”** means Milestone One, Milestone Two and Milestone Three;
- 1.40 **“Net Revenues”** means in any Year after the Effective Date Gross Revenues less the amount of annual Operating Costs in any Year;
- 1.41 **“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.
- 1.42 **“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 and such other items as may be agreed by the Trust but for the avoidance of doubt shall exclude capital expenditure, depreciation, interest payments to licensees of intellectual property, taxes and fines;
- 1.43 **“Ordinary Shares”** means the ordinary shares of [£1] each in the capital of the Company from time to time;
- 1.44 **“Parties”** means the parties to this Agreement, or any of them, as the context may require and **“Party”** shall be interpreted accordingly;
- 1.45 **“Recognised Investment Exchange”** has the meaning given to it in Section 285 of the Financial Services and Markets Act 2000;
- 1.46 **“Repayment Date”** means the earlier of the date on which an Event of Default first occurs, and the date which is five (5) Business Days following the date of any notice served

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by the Trust on the Company pursuant to Clause 4;

- 1.47 **“Research”** means the research programme, related activities and application as set out in Schedule 5 as may be amended by written agreement between the Parties from time to time;
- 1.48 **“Sale”** means (i) the acquisition by any person of 51 *per cent* of the shares of the Company or all of the shares not already owned by the acquirer; or (ii) the acquisition by any person of the whole or substantially the whole of the business and undertaking of the Company and its subsidiaries;
- 1.49 **“Subsidiary”** shall be construed in accordance with s736 Companies Act 1985 as amended;
- 1.50 **“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;
- 1.51 **“Warranties”** means the representations and warranties contained in Clause 5 and Schedule 4 and each and any of them;
- 1.52 **“Warrantors”** means both the Founder[s], [*add any other members of the management team*] and the Company; and
- 1.53 **“Year”** means a period of 12 months starting on the Repayment Date or the Effective Date as the case may require and ending on the date 12 months thereafter and each subsequent period of 12 months.
- 1.54 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).
- 1.55 The Schedules and Recitals form part of this Agreement and any reference to this Agreement shall include the Schedules and Recitals.
- 1.56 In this Agreement:
- 1.56.1 the masculine gender shall include the feminine and neuter and the singular number shall include the plural and vice versa;
- 1.56.2 references to persons shall include bodies corporate, unincorporated associations, partnerships and individuals;
- 1.56.3 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,

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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.

- 1.57 The headings in this Agreement are inserted for convenience only and shall not affect the construction of the provision to which they relate.
- 1.58 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.
- 1.59 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.
- 1.60 Where reference is made in this Agreement to the prior written consent of the Trust being required in respect of any matter, the Company shall give not less than ten (10) Business Days notice to the Trust of the matter for which such consent is required.

2. LOAN TO BE ADVANCED BY THE TRUST

- 2.1 In consideration of the rights and obligations of the Parties as set out in this Agreement, the Trust shall grant the Facility to the Company on the terms and conditions set out in this Agreement.
- 2.2 The maximum principal amount of the Facility shall be [**• Pounds Sterling (£•)**].
- 2.3 The Loan shall be used by the Company for the sole purpose of providing funding and support for the Research and shall be used for no other purpose without the prior written consent of the Trust.
- 2.4 The Company shall repay the Loan and any Accrued Interest at the earlier of:
- (i) the first occurrence of an Event of Default;
 - (ii) if the Trust decides to implement the option set out in Clause 4.1.2, no later than the Repayment Date.
- 2.5 The first tranche of the Facility may be drawn down by the Company at any time after the Effective Date by providing to the Trust a Drawdown Notice in the form set out in Schedule 1. Within 10 Business Days of the date of receipt by the Trust of such Drawdown Notice (subject to the satisfaction of the conditions set out in Clause 2.9), the Company shall draw down the Facility in respect of [**• Pounds Sterling (£•)**]. The obligations under Clauses 3, 4, 6 and 8 shall not come into effect unless and until such notice is submitted.

CONFIDENTIAL. SUBJECT TO CONTRACT.

2.6 When the Company considers that each of Milestone [1] and Milestone [2] have been achieved:

2.6.1 The Company shall as soon as reasonably practicable serve a signed Milestone Certification and Drawdown Notice on the Trust in the form set out in Schedule 2; and

2.6.2 The Trust shall confirm to the Company in writing, within 10 Business Days of receipt by the Trust of notification pursuant to Clause 2.6.1 either that:

- (i) the Milestone has been achieved to the Trust's reasonable satisfaction and drawdown of the next tranche of funds may take place, in which case, within 10 Business Days of the date of receipt by the Company of the Trust's confirmation pursuant to this paragraph (i), the Company shall draw down the Facility in the amounts set out below:

Tranche	Amount of Advance	Payable on Achievement of:
[2]	£ •	Milestone One]
[3]	£ •	Milestone Two]

or;

- (ii) the Milestone has not been achieved to the Trust's reasonable satisfaction and that the drawdown may not take place, in which case it shall provide the Company with reasonable details of the grounds on which it has reached this decision.

2.7 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 the Trust. The Company and the Founder[s] undertake to use their best efforts to ensure the achievement of Milestone [Three] by the date specified in Schedule 6.

2.8 The Founder[s] hereby confirm[s] that the Company shall have full power and authority to draw down the Facility and that no further consent of the Founder[s] shall be required.

2.9 The Trust will only be obliged to make an Advance if on the date of the Drawdown Notice and on the proposed Drawdown Date:

- (i) no Event of Default is subsisting or would result from the proposed Advance;
- (ii) the Warranties are true and correct in all respects, subject to the matters set out in the Disclosure Letter;
- (iii) The contents of the Disclosure Letter are reasonably acceptable to the Trust;

3. **INTEREST**

3.1 Interest shall accrue on a daily basis on the amount of the Loan from time to time outstanding at the rate of two per cent (2%) per annum above NatWest Bank plc base rate from time to time. Such interest shall accrue from day to day by reference to a year of three hundred and sixty five (365) days and such 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), provided that if the Trust elects that the Company shall repay the Loan in part pursuant to Clause 4.1, a pro rata proportion of the Accrued Interest shall be added to the amount of the Loan which is to be repaid on the relevant Repayment Date. Any Accrued Interest shall be payable by the Company in cash on the Repayment Date as set out in this Agreement provided that if the Loan is converted into Ordinary Shares pursuant to Clause 4.1.1, the Trust shall be deemed to have waived its rights to receive Accrued Interest and the Accrued Interest shall not be payable or be converted into Ordinary Shares.

3.2 If the Company 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 a rate which is the sum of three per cent per annum (3%) and the rate which would have been payable if the overdue amount had constituted a loan in an amount equal to such overdue amount. Any interest accruing under this Clause 3.2 shall be immediately payable by the Company on demand.

4. **CONVERSION OR REPAYMENT OPTION**

4.1 The Trust may, in its absolute discretion, serve a written demand on the Company requiring that the Company:

4.1.1 convert the full amount or part only of the Loan into fully paid new Ordinary Shares in the following circumstances:

4.1.1.1 at any time upon request by the Trust; or

4.1.1.2 in the case of a Sale, immediately prior to the completion of a Sale; or

4.1.1.3 in the case of a Listing, immediately prior to admission to trading of the shares in the Company on the Recognised Investment Exchange,

4.1.2 repay the full amount or part only of the Loan together with Accrued Interest in the following circumstances:

4.1.2.1 at any time after the third anniversary of the Effective Date in accordance with Clause 4.3; or

CONFIDENTIAL. SUBJECT TO CONTRACT.

4.1.2.2 in the case of a Sale, immediately prior to the completion of a Sale; or

4.1.2.3 in the case of a Listing, immediately prior to admission to trading of the shares in the Company on the Recognised Investment Exchange,

in each case in accordance with the terms of this Clause 4.1.

4.2 The Trust may not require the Company to repay the Loan and Accrued Interest pursuant to Clause 4.1.2 if, as a result of such repayment, the Company is reasonably likely to become insolvent provided that the Trust shall be permitted to either elect for repayment of the Loan to be made pursuant to Clause 4.1.1 or, without prejudice to the Trust's right to demand repayment at a future time, to withdraw a demand for repayment under this Clause 4.1 if, following service of the demand by the Trust, it is determined in the reasonable opinion of the Board based on the most recent management accounts of the Company or other appropriate evidence that the Company is reasonably likely to become insolvent. For the purposes of this Clause the Company shall be considered to be insolvent if, following the repayment, it would be unable to pay its debts as they fall due.

4.3 Any written demand served by the Trust on the Company shall state the amount of the Loan and Accrued Interest that shall be repaid (the "**Repayment Amount**") and shall specify that part of the Loan (if any) that shall be converted into Ordinary Shares (the "**Conversion Amount**"). For the avoidance of doubt the Trust may in its absolute discretion require the repayment of the Loan (and Accrued Interest) part in cash and part by the conversion into Ordinary Shares. Accrued Interest shall only be repayable in cash.

4.4 If the Trust decides to implement the option set out in Clause 4.1.2.1 the Repayment Amount shall be due and payable (with the first payment being due on the Repayment Date) as set out below:

4.4.1 on the Repayment Date the Company shall pay to the Trust an amount equal to twenty per cent (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, subject to Clause 4.4.2 below thereafter, on each subsequent anniversary of the Repayment Date an amount equal to twenty per cent (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;

4.4.2 if the Repayment Amount has not been repaid in full pursuant to Clause 4.1 or Clause 4.4.1 by the date seven years from the Effective Date (the "**Cut-Off Date**"), the Company shall (in lieu of making any payments under clause 4.4.1 above) on the first anniversary of the Repayment Date following the Cut-Off Date pay the Trust an amount

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equal to twenty per cent (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 per cent (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.

For the avoidance of doubt at any time until the Repayment Amount has been repaid in full the Trust shall be entitled to convert the Loan (or any balance outstanding) into Ordinary Shares pursuant to Clause 4.1.1.

- 4.5 If the Trust decides to implement the option set out in Clause 4.1.1, the Conversion Amount shall be converted into such number of fully paid new Ordinary 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 Ordinary Shares). On the relevant Repayment Date the Company shall issue the appropriate number of new Ordinary Shares to the Trust and, as soon as practical thereafter (and in any event no later than ten (10) Business Days following the relevant Repayment Date), shall enter the Trust as a member in its register of members and shall send a share certificate to the Trust at its address set out in Clause 15.1.
- 4.6 The Company undertakes at all times to ensure that it has sufficient authorised but unissued share capital and has obtained all necessary shareholders consents and approvals as may be required to issue the Ordinary Shares to the Trust pursuant to this Clause 4.
- 4.7 If, while the Loan is capable of being converted into Ordinary Shares, the Company shall make:
- 4.7.1 an issue of shares by way of capitalisation of profits or reserves (including any share premium account or capital redemption reserve to the holders of Ordinary Shares); or
 - 4.7.2 a sub-division or consolidation of Ordinary Shares; or
 - 4.7.3 a distribution in specie; or
 - 4.7.4 a repayment, return or distribution of capital (including a distribution of capital profits (whether realised or not) or capital reserves); or
 - 4.7.5 if any event similar to those described in Clauses 4.7.1 to 4.7.4 shall occur,

then the Conversion Price shall be adjusted in such manner as the Auditors shall certify. In the event that the Trust or the Company is not satisfied with any certificate of the Auditors issued pursuant to this Clause 4.6 for any reason in any circumstance in which such certificate is issued and so notifies the other Party and the Auditors in writing within 14 days of receiving such certificate or learning of its contents (if a copy of such certificate is not sent to him), the

CONFIDENTIAL. SUBJECT TO CONTRACT.

matter shall be submitted as soon as practicable to an independent firm of chartered accountants. Such firm of chartered accountants shall be agreed between the Trust and the Board of the Company or in default of agreement as nominated by the President for the time being of the Institute of Chartered Accountants of England and Wales, such firm of chartered accountants to be deemed to be an expert (and not an arbiter) and whose decision as to the matter shall be final and binding on all persons save in the case of manifest error. The fees and expenses of the independent firm of chartered accountants shall be borne by such person or persons as reasonably determined by such firm.

- 4.8 The provisions of this Clause 4 are, for the avoidance of doubt, in addition to the provisions of Clause 8 (Events of Default).
- 4.9 If at any time the Company is seeking to obtain funding from third party professional investors who are members of the BVCA, the Trust will discuss with the Company the repayment of the Loan (and Accrued Interest if relevant) pursuant to Clause 4.1 prior to completion of such investment, provided that the Conversion Price shall not be subject to amendment.

5. **WARRANTIES**

- 5.1 The Company represents and warrants to the Trust and the Founder[s] separately represent[s] and warrant[s] to the Trust that, on the Effective Date, on each Anniversary Date and on the date of any Advance, each of the statements (subject to the Disclosure Letter) set out in Schedule 4 is true and accurate in all respects.
- 5.2 The Warrantors severally acknowledge that they have given the Warranties with the intention of inducing the Trust 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 the Trust has been induced to enter into this Agreement and make available the Facility on the basis of and in full reliance upon them.
- 5.3 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.
- 5.4 The limitations on liability set out in Clause 6 shall apply in respect of the liability of the Warrantors under this Agreement provided that no provision of Clause 6 shall apply to limit or exclude the liability of the Warrantors in circumstances of fraud or wilful concealment by the Warrantors.
- 5.5 Where any statement in the Warranties is qualified by reference to the knowledge, awareness or belief of the Warrantors, the Warrantors shall be deemed to be aware of all matters which they would have known (or its directors would have known) if they had made diligent and careful enquiry.
- 5.6 The Warrantors will immediately cause to be disclosed in writing to the Trust any fact, matters, circumstances or other information which may become

CONFIDENTIAL. SUBJECT TO CONTRACT.

known to any of them which is a breach of or can reasonably be expected to be, or be likely to cause, a breach of any of the Warranties.

- 5.7 If any deduction or withholding is required by law to be made from any sum payable by the Founder[s] to the Trust pursuant to any Claim, the Founder[s] shall be obliged to pay to the Trust such sum as will after the deduction or withholding has been made, leave the Trust with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.
- 5.8 If any sum paid to the Trust pursuant to any Claim is or will be chargeable to Tax, the Founder[s] shall be obliged to pay such further sums as will, after payment of the Tax, leave a sum equal to the amount that would otherwise have been payable if Tax had not been so chargeable.

6. LIMITS ON LIABILITY

- 6.1 The liability of the Founder[s] under this Agreement shall be limited as follows:
- 6.1.1 the Trust shall not be entitled to recover any damages in respect of any Claim or Claims unless the aggregate loss or damage amount in respect of all such Claim or Claims for which [each of]the Founder[s] is[are] liable exceeds ten thousand Pounds Sterling (£10,000), in which event a claim in respect of the total loss or damage may be made;
- 6.1.2 the maximum liability of [each of] the Founder[s] in respect of the aggregate of all Claims shall not exceed fifty thousand Pounds Sterling (£50,000).
- 6.2 The maximum liability of the Company under this Agreement in respect of the aggregate of all Claims shall not exceed the maximum principal amount of the Facility.
- 6.3 The Warrantors shall not be liable and no Claim or Claims shall be made against them:
- 6.3.1 if the fact, omission, circumstances or occurrence giving rise to the Claim has been properly and fairly disclosed to the Trust in the Disclosure Letter;
- 6.3.2 if the matter giving rise to the Claim is provided for under the terms of this Agreement; or
- 6.3.3 if the Claim arises from any act, matter or thing done by the Founder[s] or the Company at and in accordance with the written request of the Trust.
- 6.4 To the extent that any breach of the Warranties is in the reasonable opinion of the Trust capable of remedy, the Trust shall, at its discretion, afford the Warrantors an opportunity to remedy the matter complained of within 30

Business Days of receipt of written notice from the Trust specifying the breach and requiring its remedy.

7. **TERMINATION**

Except for the provisions of Clauses 5 (Warranties), 6 (Limits on Liability), 13 (Announcements) and 14 (Confidentiality) 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.

8. **EVENTS OF DEFAULT**

8.1 The following events or circumstances set out in this Clause 8 shall each constitute an Event of Default:

8.1.1 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, provided that the operation of Clause 4.2 shall not constitute an Event of Default;

8.1.2 the Company fails to issue new Ordinary Shares to the Trust if requested by the Trust in accordance with the terms of Clause 4;

8.1.3 any breach of a Warranty by any of the Warrantors, subject to the matters set out in the Disclosure Letter;

8.1.4 a proposal is made or a nominee or supervisor is appointed for a composition in satisfaction of the debts of the Company or a scheme or voluntary arrangement of its affairs within the meaning of the relevant bankruptcy or insolvency laws, or the Company enters into any composition or voluntary arrangement for the benefit of its creditors, or proceedings are commenced in relation to the Company under any law, regulation or procedure relating to the re-construction, deferment or re-adjustment of all or substantially all of the Company's debts;

8.1.5 the Company 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 Company, other than for a solvent reconstruction or amalgamation;

8.1.6 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 Company;

8.1.7 an effective resolution being passed for the winding-up or entering into administration (whether out of court or otherwise) of the Company;

CONFIDENTIAL. SUBJECT TO CONTRACT.

- 8.1.8 a distress, execution or other legal process being levied against all or substantially all of the assets of the Company, and not being discharged or paid out in full within ten (10) Business Days of the commencement of each process; or
 - 8.1.9 the occurrence in respect of the Company of any event in any jurisdiction to which it is subject having an effect similar to that of any of the events referred to in Clauses 8.1.1 to 8.1.8 above; or
 - 8.1.10 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.
- 8.2 On the occurrence of an Event of Default the Trust may in its absolute discretion serve written notice on the Company and the Loan and Accrued Interest shall then become immediately due and payable provided that, in its absolute discretion, the Trust may by notice in writing to the Company waive its rights pursuant to this Clause 8.2.

9. OBLIGATIONS OF THE COMPANY AND THE FOUNDER[S]

- 9.1 The Founder[s] agree[s] to exercise all [his][their] rights and powers as a member of the Company and under this Agreement to procure (so far as [he/they] [is/are] able) that the Company shall not do any of the following (save as provided in this Agreement) and [he/they] shall not pursue any of the following in relation to the Company without the prior written consent of the Trust:
- 9.1.1 any amendment to its Memorandum of Association or Articles of Association;
 - 9.1.2 the appointment and removal of the Auditors or other professional advisers;
 - 9.1.3 the adoption of the Audited Accounts, or the annual accounts if the Company's accounts are not required to be audited;
 - 9.1.4 any change to the accounting reference date or accounting policies;
 - 9.1.5 any disposal or licensing of any Business IPRs;
 - 9.1.6 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 granted under any employee share scheme pursuant to Clause 9.7 and the issue of Ordinary Shares to the Trust under Clause 4;
 - 9.1.7 any variation of the rights attaching to any class of shares including the rights, preferences and privileges of the Ordinary Shares including any dis-application of pre-emption rights and anti-dilution protection; and

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- 9.1.8 any payment of dividends on any class of shares.
- 9.2 Following receipt of a written demand from the Trust pursuant to Clause 4.1.2.1, the Company shall provide a budget to the Trust setting out its proposed income and expenditure for the next twelve months. Following approval of the budget by the Trust, during any period where the Company is repaying the Loan to the Trust in accordance with Clause 4.1.2.1, any material change to the budget will require the prior written consent of the Trust.
- 9.3 The Company undertakes to the Trust so far as it lawfully can that the Company shall not and shall procure that none of its subsidiaries shall undertake any of the matters set out in Clause 9.1 without the prior written consent of the Trust. Each of the Parties expressly agrees with each of the others that any restriction imposed by law on the Company's ability to give such undertaking in respect of any matter referred to in Clause 9.1 shall not affect such undertaking as between the other Parties or any other undertaking to which such restriction does not apply.
- 9.4 The Company shall prepare and submit to the Trust Audited Accounts (if it is legally required to prepare audited accounts) and otherwise the annual accounts for the previous financial year (together with any management letters relating to them) as soon as they are available and in any event, within 120 days of the end of each financial year. The Company shall also provide additional financial or corporate information relating to the Company (including without limitation details of shareholdings, management accounts and minutes of board meetings) to the Trust upon reasonable written request.
- 9.5 The Trust may establish a site visit group comprising persons nominated by the Trust. The site visit group shall, on reasonable notice by the Trust to the Company, visit the premises of the Company and meet with key scientists and other employees and consultants for the Company for the purposes of explaining and updating the Trust on technical progress. The Founder[s] may suggest to the Trust appropriate individuals who could be members of the site visit group but the final decision on membership of the group shall be taken by the Trust.
- 9.6 The Company shall not use the "Wellcome Trust" name or logo except with the prior written consent of the Trust and in the manner approved by the Trust.
- 9.7 The Company shall be responsible for the management, monitoring and control of all research work undertaken by it. This shall include, as appropriate, the requirements of all applicable laws and regulatory authorities governing the use of radioactive isotopes, animals, pathogenic organisms genetically modified organisms, toxic and hazardous substances, research on human subjects and human embryos, and include appropriate ethical approvals and consents, including for example but not limited to, such approvals and consents for obtaining tissues and other human samples.
- 9.8 The Board shall be permitted to grant options to subscribe for Ordinary Shares in the Company to directors and employees of the Company provided that the grant of options to subscribe for Ordinary Shares in the Company representing

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in excess of ten per cent (10%) of the issued share capital of the Company (excluding any potential conversion of the Loan pursuant to this Agreement) shall require the prior written consent of the Trust.

10. **RIGHTS OF THE TRUST IN FUTURE FUNDINGS**

10.1 The Founder[s] and the Company undertake to procure that if the Company is raising investment (the “**Further Investment**”) by way of a subscription for shares (or any instrument convertible into shares) the Trust (or any Affiliate of the Trust nominated by the Trust) shall be given the opportunity (but not an obligation) to subscribe for the same class of shares (or the same instrument convertible into shares) in the Company at the same price per share as other investors in an amount up to a maximum of 10 per cent of the fully diluted equity of the Company. In such circumstances, the Company shall, as soon as they are made available for other potential investors, provide the Trust with a copy of an up to date business plan, the most recent management accounts and any other information provided by the Company to other potential investors or as may reasonably be requested by the Trust.

10.2 The Company shall procure that if the Trust converts the Loan into Ordinary Shares pursuant to Clause 4 or if the Trust participates in any Further Investment, the following terms shall apply:

10.2.1 the Trust shall for as long as it holds at least five per cent (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;

10.2.2 the Trust shall be a party to a subscription and shareholders agreement which will be entered into by the major investors in the Company and which will include a standard list of matters which will require the prior approval of the Trust 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 Trust. The Company will provide usual representations and warranties to the Trust on its subscription for shares as part of any Further Investment which representations and warranties shall be at least as restrictive as those set out in Schedule 4;

10.2.3 the Articles of Association of the Company will include standard tag along and co-sale rights; and

10.2.4 the Trust will be entitled to standard inspection and visitation rights.

11. **WAIVER**

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.

12. **ENTIRE AGREEMENT/VARIATIONS**

12.1 This Agreement, together with the Application for a University Translation Award made by the Company to the Trust on ● 200● and any agreement entered into pursuant to such agreements constitutes the entire agreement and understanding between the Parties relating to the subject matter hereof and together they supersede and replace all prior drafts, previous understandings, arrangements, representations or agreements, whether in writing or oral, between the Parties relating to the subject matter of this Agreement.

12.2 No variation, amendments, modification or supplement to this Agreement shall be valid unless and until it is made in writing and signed by a duly authorised representative of each Party.

13. **ANNOUNCEMENTS**

Save as required by law or any competent regulatory authority no announcement concerning this Agreement or its subject matter shall be made by any of the Parties without the prior approval of the Trust.

14. **CONFIDENTIALITY**

14.1 The Parties shall keep confidential and ensure that their respective Connected Persons, and their respective officers, employees, agents and professional and other advisers shall keep confidential any information (the “**Confidential Information**”):

14.1.1 relating to the customers, business, assets or affairs of the Company;

14.1.2 relating to the customers, business, assets or affairs of the other Parties;
or

14.1.3 which relates to the contents of this Agreement or any agreement or arrangement entered into pursuant to this Agreement.

14.2 Save as set out below, no Party may use for its own business purposes or disclose to any third party any Confidential Information of any other Party without the prior consent of the Party to whom the Confidential Information relates. This Clause does not apply to:

14.2.1 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); or

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- 14.2.2 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;
 - 14.2.3 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;
 - 14.2.4 the disclosure of information to the extent required to be disclosed by law 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;
 - 14.2.5 the disclosure to a Party's professional advisers of information reasonably required to be disclosed for purposes relating to this Agreement;
 - 14.2.6 any announcement made, or information provided in relation to the Company with the approval of the Trust in accordance with Clause 13; and
 - 14.2.7 the disclosure of information by the Trust for the purposes of publishing summary details of awards made by the Trust consisting of the name of the Company, the name of the Founder[s], the title of the project and the amount of the award.
- 14.3 Each Party shall inform any officer, employee 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:
- 14.3.1 to keep it confidential; and
 - 14.3.2 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 Clause),
- provided that the disclosing Party shall remain responsible for any breach of this Clause 14 by the person to whom that Confidential Information is disclosed.
- 14.4 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 this Clause and the remedies of injunction, specific performance and other equitable relief are appropriate for any threatened or actual breach of any such provision.

15. **NOTICES**

- 15.1 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) or by facsimile confirmed by registered, recorded delivery or certified mail (postage prepaid) to the address or facsimile number of the recipient Party set out below or such other address or facsimile number as a Party may from time to time designate by written notice to the other Parties. Any notice by facsimile shall be confirmed by the sender sending a confirmatory copy of the notice by registered, recorded delivery or certified mail (postage prepaid).

Address of Company Limited

[Address]

[Address]

[Address]

Fax No: [00000000000]

for the attention of: [Name]

Address of Founder[s]

[Address]

[Address]

[Address]

Fax No: [00000000000]

for the attention of: [Name]

Address of the Trust

The Awards Officer
The Wellcome Trust Limited, Technology Transfer Division
215 Euston Road
London NW1

Fax No: +44 (0) 20 7611 8857

for the attention of: The Awards Officer

with a copy to: [Name of Business Analyst]

- 15.2 Any notice given pursuant to this Clause 15 shall be deemed to have been received:

- 15.2.1 in the case of delivery by courier or sending by certified mail, on the day of receipt, provided receipt occurs on a Business Day of the recipient Party or otherwise on the next following Business Day of the recipient; or

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15.2.2 in the case of facsimile, on acknowledgement by the recipient facsimile receiving equipment on a Business Day if the acknowledgement occurs before 5:00 pm local time of the recipient Party and in any other case on the following Business Day.

15.3 Any notice that is required in this Agreement to be given in writing shall include notices by fax or post but shall not include any notice by e-mail.

16. **ASSIGNMENT**

No Party shall without the prior written consent of the other Parties assign, transfer, convey or declare a trust over this Agreement or make any other disposition (whether in whole or in part) or any of its rights and obligations hereunder to any third party.

17. **SEVERANCE OF TERMS**

17.1 If the whole or any part of this Agreement is or becomes or is declared illegal, invalid or unenforceable in any jurisdiction for any reason (including both by reason of the provisions of any legislation and also by reason of any court or competent authority which either has jurisdiction over this Agreement or has jurisdiction over any of the Parties):

17.1.1 in the case of the illegality, invalidity or un-enforceability of the whole of this Agreement it shall terminate only in relation to the jurisdiction in question; or

17.1.2 in the case of the illegality, invalidity or un-enforceability of part of this Agreement that part shall be severed from this Agreement in the jurisdiction in question and that illegality, invalidity or un-enforceability shall not in any way whatsoever prejudice or affect the remaining parts of this Agreement which shall continue in full force and effect.

17.2 If in the reasonable opinion of any Party any severance under this Clause 17 materially affects the commercial basis of this Agreement, the Parties shall discuss, in good faith, ways to eliminate the material effect.

18. **COSTS**

Each Party shall bear its own legal costs, legal fees and other expenses incurred in the preparation and execution of this Agreement.

19. **FURTHER ASSURANCES**

Each Party shall perform such acts and execute such documents as may be reasonably required for securing to or vesting in another Party the rights agreed to be granted to it under or pursuant to this Agreement.

20. **GENERAL**

- 20.1 If any provisions of the Memorandum or Articles of the Company at any time conflict with any of the provisions of this Agreement, the provisions of this Agreement shall prevail.
- 20.2 Nothing in this Agreement shall be taken to constitute a partnership between the Parties. Except as specifically provided in this Agreement, none of the Parties shall by reason of this Agreement be empowered to act as agent for any other party nor to pledge the credit of any other party nor shall any Party be held liable for or incur liability in respect of the acts or defaults of any other Party to this Agreement.
- 20.3 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has 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.
- 20.4 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.

21. **GOVERNING LAW**

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 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

Signed for and on behalf of)
THE WELLCOME TRUST)
LIMITED as trustee of)
The Wellcome Trust)
by its authorised signatory)

Authorised Signatory

Signed for and on behalf of)
[COMPANY])
LIMITED)

Director

Director/Secretary

Signed by)
[FOUNDER[S]])

.....

SCHEDULE 1

Notice of Drawdown

[Company] Limited
[Address]
[Address]
[Address]

[Individual/Founder]
[Address]
[Address]
[Address]

The Awards Officer
Technology Transfer Division
The Wellcome Trust Limited
The Wellcome Building
215 Euston Road
London NW1 2BE

[Date]

Dear Sirs

The Convertible Loan Agreement made on [] 2005 between [Company] and The Wellcome Trust Limited (the “Loan Agreement”)

We hereby give you irrevocable notice that, pursuant to Clause 2.5 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 condition specified in Clause [2.9] is satisfied on the date of the proposed drawdown.

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 2

Milestone Certification and Drawdown Notice

[Company] Limited
[Address]

[Individual/Founder]
[Address]

The Awards Officer
Technology Transfer Division
The Wellcome Trust Limited
The Wellcome Building
183 Euston Road
London NW1 2BE

[Date]

Dear Sirs

The Convertible Loan Agreement made on [] 2005 between [Company] and The Wellcome Trust Limited (the "Loan Agreement")

We refer to Milestone [One][Two] as described in the Loan Agreement and hereby confirm the completion of the achievement of such Milestone. A report detailing achievement of Milestone [One][Two] is attached to this letter. Please confirm that Milestone [One][Two] has been achieved to your reasonable satisfaction and that we may proceed to drawdown £[●] in respect of the [Second][Third] tranche of the Facility.

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 £[insert amount of Advance] of the Facility Amount upon the terms and subject to the conditions of the Loan Agreement and, in accordance with Clause [2.7] of the Loan Agreement.

We confirm that each condition specified in Clause [2.9] is satisfied on the date of the proposed drawdown.

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 3

Part I Details of [name of Company]

- (1) Company Number: []
- (2) Date and Place of Incorporation: []
- (3) Share Capital:
 - (i) Authorised: []
 - (ii) Issued: []
- (4) Registered Holder: []
- (5) Registered Office: []
- (6) Director: []
- (7) Secretary: []
- (8) Accounting Reference Date: []

SCHEDULE 4

Warranties

1. THE COMPANY

The details of the Company set out in Schedule 3 are correct and accurate.

2. CAPACITY

2.1. The Company has full power and authority to enter into and perform this Agreement, and this Agreement constitutes a binding obligation on the Company in accordance with its terms.

2.2. The execution and performance by the Company of its obligations under this Agreement will not:

(a) result in a breach of any provision of its Memorandum of Association or Articles; or

(b) constitute a default under any agreement, instrument or arrangement, whether binding or not, to which the Company is a party, or any order, judgement or decree of any court or governmental agency to which the Company or the Founder[s] are a party or by which any of them are bound.

3. SHARES AND LOAN CAPITAL

3.1. The person[s] listed in Schedule 3 as the registered shareholder [is][are] the [sole] beneficial owner[s] of the number of shares in the Company set out opposite [his][their] name in Schedule 3 which constitutes all the issued shares of the Company.

3.2. There is no conditional or unconditional agreement or commitment outstanding which calls for the allotment, issue, transfer or conversion of any share of the Company other than as provided in this Agreement.

3.3. There is no option, right to acquire, pledge, lien, mortgage or charge or other form of security or encumbrance or equity on, over or affecting any shares in the Company and there is no conditional or unconditional agreement or commitment to give or create any and no claim has been made by any person to be entitled to any other than as provided in this Agreement and any relevant statutory provisions.

3.4. The Company does not have and has never had any beneficial interest in or legal title to any equity capital or loan capital in any other person.

3.5. The Company does not act or carry on business in partnership with any other person, nor is the Company a member (otherwise than through the

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holding of share capital) of any corporate or unincorporated body, undertaking or association.

- 3.6. The issue of the Shares in accordance with this Agreement will comply with all applicable laws and with all other agreements by which the Company is bound. All of the shares when issued in accordance with this Agreement will be validly issued and fully paid.
- 3.7. The existing Articles set out all the rights and privileges which are applicable to the Company and neither the Company nor the director nor the existing shareholder[s] [has/have] entered into any agreement, understanding or arrangement amending, modifying or supplementing any of the same.

4. INFORMATION AND ACCOUNTS

4.1. All facts and information concerning the Company reasonably believed by the Warrantors to be material for disclosure to the Trust in connection with the grant of the Facility pursuant to this Agreement have been fairly disclosed in the Business Plan or in the Disclosure Letter.

4.2. The Warrantors have carefully reviewed the Business Plan and:

- (a) the Business Plan has been prepared with reasonable skill, diligence and care;
- (b) all factual information contained in the Business Plan was when given and remains true and accurate and not (whether by omission or otherwise) misleading;
- (c) all statements of opinion, forecasts, projections and budgets contained or referred to in the Business Plan:
 - (i) have been honestly and reasonably made;
 - (ii) have been properly prepared on bases and assumptions which are honestly considered by the Warrantors, after careful enquiry, to be fair and reasonable; and
 - (iii) are fair and reasonable in the circumstances,

and neither the opinions, forecasts and projections, nor the assumptions on which they were based are misleading in any material respect in the light of any events or circumstances which have arisen since the preparation of the Business Plan.

5. THE AUDITED ACCOUNTS

5.1. A true, complete and fair copy of the Audited Accounts is annexed to the Disclosure Letter.

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5.2. The Audited Accounts were prepared under the historic cost convention and complied with, and were prepared in accordance with, all applicable accounting requirements, and have been carefully prepared on a basis consistent with generally accepted accounting practices and policies in the United Kingdom.

5.3 The Audited Accounts:

- (a) give a true and fair view of the assets and liabilities of the Company as at the Accounts Date and of its profits for the financial period ended on the Accounts Date;
- (b) fully disclose all the assets of the Company as at the Accounts Date;
- (c) make provision for, reserve for or disclose, as appropriate, all liabilities, whether actual, contingent, unquantified or disputed, all capital commitments, whether actual or contingent, and all bad or doubtful debts of the Company as at the Accounts Date in accordance with all relevant accounting requirements, and
- (d) make provision for or reserve for deferred taxation in accordance with all applicable accounting requirements.

6. THE MANAGEMENT ACCOUNTS

6.1. The Management Accounts have been prepared honestly and diligently and fairly reflect the financial position of the Company as at •.

6.2. So far as the Company is aware, there has been no material change in the financial position of the Company that would affect the Management Accounts since •.

6.3. The Management Accounts have been reviewed and approved by the Board.

7. POSITION SINCE THE ACCOUNTS DATE

Since the Accounts Date:

- (a) no dividend or other distribution (within the meaning of that expression as contained in section 209 or 210 or 418 of the Income and Corporation Taxes Act 1988) has been declared, paid or made by the Company;
- (b) the Company has carried on its business in the ordinary and usual course without any interruption in its nature, scope or manner and so as to maintain the same as a going concern;
- (c) the Company has not written off any debts, no debt has been released by the Company on terms that the debtor pays less than the book value of its debt, and no debt owing to the Company has proved to any extent to be irrecoverable;

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- (d) the Company has not entered into any contract involving expenditure on capital account or the purchase of any capital equipment or other items of a capital nature;
- (e) the business of the Company has not been materially or adversely affected by the loss of any customer;
- (f) there has been no material adverse change in the financial position or trading prospects or turnover of the Company and, so far as the Warrantors are aware, no event, fact or matter has occurred or is likely to occur which will or is likely to give rise to any such change;
- (g) no contract or commitment (whether in respect of capital expenditure or otherwise) has been entered into by the Company on terms which will allow for less than full recovery of costs, overheads and profit or which is of a long term or unusual nature, or which involves an obligation of a material nature or magnitude; and for this purpose a long term contract or commitment is one which will not be performed in accordance with its terms within three months after the date it was entered into or undertaken or which is incapable of termination by the Company on three months' notice or less;
- (h) the Company has not acquired or disposed of or agreed to acquire or dispose of any business or any asset or assumed or acquired any liability (including any contingent liability) or made any payment otherwise than in the ordinary course of business and at arm's length;
- (i) the Company has not disposed of or agreed to dispose of any asset for a consideration payable by instalments where any instalment remains unpaid;
- (j) so far as the Warrantors are aware, all cash and payments of any kind received by the Company have been credited to its accounts with its bankers;
- (k) so far as the Warrantors are aware, the Company has paid its creditors in accordance with the same policy as that adopted throughout the financial period ended on the Accounts Date;
- (l) so far as the Warrantors are aware none of the assets of the Company has been diminished by the wrongful act of any person; and
- (m) so far as the Warrantors are aware the Company has not by doing or omitting to do anything prejudiced its goodwill.

8. LICENCES AND CONSENTS

The Company has obtained all governmental and regulatory licences, permissions, authorisations and consents required to own and operate its assets and for the proper carrying on of its business which are in full force and effect and the Company is not in breach of any of the terms and conditions attached to any of them.

9. **ASSETS**

The Company owns all the assets used in the operation of its business and which are material to the operation of its business. None of such assets are subject to any Encumbrance.

10. **DEBTS**

The Company does not owe any sums other than trade debts incurred in the ordinary course of business.

11. **CONFIDENTIAL INFORMATION**

11.1. The Company does not use any processes or business methods, and is not engaged in any activities, which involve the misuse or alleged misuse of any confidential information belonging to any third party.

11.2. The Warrantors are not aware of any actual or alleged misuse by any person of any of the Company's confidential information (including customer lists which are maintained by or on behalf of the Company in any format or medium).

11.3. The Company has not disclosed to any person any of its confidential information except (i) to its professional advisers; or (ii) where such disclosure was properly made in the normal course of the Company business and was made subject to a written agreement under which the recipient is obliged to maintain the confidentiality of such confidential information and is restrained from further disclosing or using it other than for the purposes for which it was disclosed by the Company.

12. **INTELLECTUAL PROPERTY RIGHTS**

12.1. Save in respect of the Licensed-In IPRs, the Company is the sole legal and beneficial owner and, where registered, the sole registered proprietor of all the Business IPRs free from all Encumbrances.

12.2. To the best of the knowledge, information and belief of the Warrantors, the Business IPRs are valid and enforceable and not subject to any pending or threatened claims, challenges or proceedings.

12.3. So far as the Warrantors are aware, no third party has made unauthorised use of any Business IPRs nor threatened to do so.

12.4. The Company has taken all steps and made all payments which are required to prosecute, maintain and renew all Business IPRs within the required timescales.

12.5. No licensee of any Business IPRs is in breach of the relevant agreement, and there are no actual or pending disputes in relation to such agreements.

- 12.6. To the best of the knowledge, information and belief of the Warrantors, all agreements relating to Licensed-In IPR are valid and in force. No notice has been given by any relevant party to terminate any of them. The Company and all counterparties have complied with their respective obligations, and no disputes are pending or threatened in respect of any of them.
- 12.7. To the best of the knowledge, information and belief of the Warrantors, none of the activities of the Company infringe, or have been alleged to infringe, the IPRs of any third party.
- 12.8. The Company carries on its business under its corporate name and no other.

13. DATA PROTECTION

- 13.1. The Company has a current notification under the UK Data Protection Act 1998 (“**DPA**”) on terms which are appropriate to cover its current and foreseeable activities in relation to its business.
- 13.2. The Company has complied in all material respects with the DPA and its preceding legislation.
- 13.3. The Company owns all IPRs in its customer lists and databases.
- 13.4. No correspondence has been received from the UK Information Commissioner, or from any third party, regarding a breach or alleged breach by the Company of its obligations under the DPA, and no dispute has arisen or is threatened in relation to the same.

14. CONTRACTS WITH CONNECTED PERSONS

- 14.1. There are no existing contracts or engagements to which the Company is a party and in which the Founder[s] and/or any director of the Company and/or any person who is a Connected Person with any of them is interested.
- 14.2. The Founder[s] and/or any person who is a Connected Person with the Founder[s] [does][do] not own and [is][are] not otherwise interested in any property used in connection with the business of the Company.
- 14.3. The Founder[s] [is][are] not either collectively or individually or with any other person or persons, directly or indirectly, engaged in any other business and [he][they] [is][are] not concerned or interested in any way whatsoever in any other business of a similar nature to or competitive
- 14.4. There are no arrangements or other commitments of the Founder[s] which could affect [his][their] ability to devote [his][their] required working hours to the affairs of the Company.

15. CONTRACTS

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- 15.1. The Company is not a party to or bound by:
- (a) any contract (including a contract otherwise wholly performed under which obligations or liabilities may arise in the future) not in the ordinary and proper course of its business;
 - (b) any guarantee or contract of indemnity (whether within or outside the ordinary course of business) by virtue of which it is under an actual or contingent liability;
 - (c) any power of attorney;
 - (d) any contract in respect of which the liability or prospective liability of the Company is guaranteed by any person;
 - (e) any distributorship or agency contract; or
 - (f) any joint venture, consortium, partnership or profit sharing arrangement or agreement or a member of any partnership, whether formal or informal and whether or not having a separate legal identity.

16. BORROWINGS

Except as disclosed in the accounts the Company does not have outstanding:

- (a) any borrowing or indebtedness in the nature of borrowing including any bank overdrafts, liabilities under acceptances (otherwise than in respect of normal trade bills) and acceptance credits other than borrowing or indebtedness arising in the ordinary course of business;
- (b) any guarantee indemnity or undertaking (whether or not legally binding) to procure the solvency of any person or any similar obligation.

17. LITIGATION, OFFENCES AND COMPLIANCE WITH STATUTES

- 17.1. Otherwise than as claimant in the collection of debts arising in the ordinary course of business (none of which exceed £1,000) neither the Company nor any person for whose acts or defaults the Company may be vicariously liable is claimant, defendant or otherwise a party to any litigation, arbitration or administrative proceedings which are in progress or are threatened or pending by or against or concerning the Company or any of its assets; the Company is not being prosecuted for any criminal offence and no governmental or official investigation or inquiry concerning the business or officers of the Company or any of its assets is in progress or pending and there are no circumstances which are likely to give rise to any such proceedings investigation or inquiry.
- 17.2. Neither the Company nor any of its officers, agents or employees (during the course of their duties in relation to the business of the Company) has committed or omitted to do any act or thing which is or could be in contravention of any statutory obligation or any other law of

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the United Kingdom or any other country giving rise to any fine, penalty, default proceedings or other liability in relation to the business or officers of the Company or any of its assets or any judgment or decision which would materially affect the financial or trading position or prospects of the Company.

- 17.3. None of the Warrantors has ever been charged with or convicted of any criminal offence other than a road traffic offence (not involving a custodial sentence, whether suspended or not).
- 17.4. The Founder[s] [has][have] never been the subject of any order under Company Directors Disqualification Act 1986 or been adjudged bankrupt or been the subject of a petition for a bankruptcy order duly presented to the court or entered into a voluntary arrangement (within the meaning given in Section 253 of the Insolvency Act 1986) or been the subject of an interim order under Section 252 of that Act. No analogous proceedings have ever been brought or threatened in respect of any of the directors of the Company and the directors of the Company are not aware of any facts or matters which they believe might give rise to any such criminal or bankruptcy proceedings.

18. TAXATION

- 18.1. The Company has no Tax liability resulting from or by reference to any income, profits or gains earned, accrued or received on or before the date hereof.
- 18.2. The Company is registered for VAT and has complied with all requirements relating to VAT and all returns, computations, notices and information which are or have been required to be made or given by the Company for any Tax purpose (i) have been made or given in all material respects within the requisite periods and on a proper basis and are up-to-date and correct and (ii) none of them is, or is likely to be, the subject of any dispute with the Inland Revenue or other Tax authority.

19. ADMINISTRATION

- 19.1. All the accounts, books, registers, ledgers and financial and other material records of whatsoever kind of the Company (including all invoices and other records required for VAT purposes) are up to date, in its possession or under its control and have been fully properly and accurately kept and compiled.
- 19.2. Every document required by the Companies Acts to be filed with the Registrar of Companies has been duly filed and compliance has been and is being made by the Company with the Companies Acts.
- 19.3. The copy of the Memorandum and Articles of Association of the Company provided to the Trust is accurate and complete in all respects, includes copies of all resolutions and documents required to be incorporated therein and fully sets out all rights attaching to each class

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of the share capital of the Company. The register of members and other statutory books of the Company have been properly kept and contain a true, accurate and complete record of all the matters which should be dealt with therein and no notice or allegation that any of the same is incorrect or should be rectified has been received.

- 19.4. All legal requirements in connection with the formation of the Company have been observed and all material legal requirements in connection with the conduct of the Company have been observed.
- 19.5. The Company has not at any time carried on any business other than the business carried on at the date hereof.
- 19.6. No order has been made or petition presented or resolution passed for the winding-up of the Company, no distress, execution or other process has been levied on any of its assets, it has not suspended payment and is not insolvent or unable to pay its debts within the meaning of section 123 Insolvency Act 1986, no order has been made or petition presented or resolution passed for the appointment of an administrator, no receiver has been appointed or could be appointed by any person of its business or assets or undertaking or any part thereof and there is no unfulfilled or unsatisfied judgment, arbitration award or court order or arbitration order outstanding against it and the Company is not aware of any matter which might lead to the occurrence of any such an event.

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SCHEDULE 5

The Research Programme

[]

SCHEDULE 6

Milestones

Milestone One

The achievement of the following:

[]

It is expected that Milestone One will be achieved by [• months] from the Effective Date.

Milestone Two

The achievement of the following:

[]

It is expected that Milestone Two will be achieved by [• months] from the Effective Date.

Milestone Three

The achievement of the following:

[]

It is expected that Milestone Three will be achieved by [• months] from the Effective Date.