



Fight for Sight's Intellectual Property Rights

1. Intellectual Property

Background Intellectual Property

1.1 All Background Intellectual Property used in connection with the Research shall remain the property of the party introducing the same.

Identification of Resulting Intellectual Property arising

1.2 It is the responsibility of the Research Organisation and all engaged in Research to identify any Resulting Intellectual Property.

1.3 The Research Organisation shall within 1 month of identification disclose to Fight for Sight all Resulting Intellectual Property conceived, made, first reduced to practice or developed further to the Research.

Registration of Resulting Intellectual Property

1.4 The Research Organisation has an obligation to register any Resulting Intellectual Property unless otherwise permitted by Fight for Sight

1.5 If Fight for Sight in its sole discretion directs that a patent application or application for other intellectual property protection be filed in respect of any Resulting Intellectual Property notified to it in accordance with Clause 1.2, the Research Organisation shall at its own cost and in its own name prepare, file and prosecute such application and shall commence such application procedure within one month of receiving instruction from Fight for Sight to do so.

1.6 Fight for Sight shall co-operate with the Research Organisation to ensure that such application will cover, to the best of Fight for Sight's knowledge, all items of commercial interest and importance. While the Research Organisation will be responsible for making decisions regarding the scope and content of application to be filed and the prosecution thereof, Fight for Sight shall be given an opportunity to review and provide input thereto.

1.7 The Research Organisation shall keep Fight for Sight advised about all developments concerning such application and shall promptly supply to Fight for Sight copies of all papers received and

filed in connection with the prosecution thereof in sufficient time for Fight for Sight to comment thereon.

1.8 The Research Organisation undertakes that it shall not enter into any arrangement with another funder, sponsor or other person or body relating to the Research such that any third party shall have any proprietary interest in the Resulting Intellectual Property without the prior written approval of Fight for Sight.

Ownership of Intellectual Property arising

1.9 Subject to Clause 1.19, the Research Organisation shall own all rights in and to any Resulting Intellectual Property for the full duration of such rights, wherever in the world enforceable, and shall procure assignments from the Principal Researcher(s) and the Researcher(s) and any other party who engages in the Research, insofar as such researchers are not already bound by confidentiality agreements to the Research Organisation by virtue of their employment by the Research Organisation.

1.10 The Research Organisation agrees that, during the course of this agreement, it will not permit the Principal Researcher(s), Researcher(s) or their research teams to enter into any agreement, arrangement, joint venture, collaboration, competitive project or other dealing whatsoever with any other person or body which would or might affect, conflict with or prejudice this agreement or the rights of Fight for Sight under it, or which would or might prejudice the general objectives of the Research.

1.11 To the full extent permissible by applicable laws, the Research Organisation shall procure waivers of moral rights arising as a result of the Research from the Principal Researcher(s), Researcher(s) or any other party it shall engage in the Research.

Licence of Intellectual Property to Fight for Sight

1.12 The Research Organisation grants to Fight for Sight an unlimited, irrevocable, royalty-free, paid-up, non-exclusive right and licence in perpetuity to reproduce, translate and use all Resulting Intellectual Property.

1.13 The Research Organisation confirms that the licence granted to Fight for Sight under Clause 1.12 will include all rights of development, promotion, marketing, manufacture, distribution, exploitation and dealing in relation to the results of the Research and the Resulting Intellectual Property.

1.14 Fight for Sight has the right to sub-license, assign and otherwise transfer its rights under Clauses 1.12 and 1.13.

Option to acquire sole licence

1.15 The Research Organisation grants to Fight for Sight a first option over the Research and/or the Resulting Intellectual Property on terms and conditions to be mutually agreed between the parties (which may include a negotiated consideration) for a sole and exclusive licence (with a right to sub-licence).

1.16 If Fight for Sight exercises the option and requires for that purpose access to Background Intellectual Property owned by or licensed to the Research Organisation in order to exploit effectively the Resulting Intellectual Property, the Research Organisation will grant a royalty-free non-exclusive licence to Fight for Sight over any such Background Intellectual Property that the Research Organisation is free to license for this specific purpose.

1.17 For the avoidance of doubt, the Research Organisation shall be deemed to be free to licence any intellectual property rights which comprise Resulting Intellectual Property under a different Research project or which would be Resulting Intellectual Property had the funding for that project been governed by these terms.

Protection of Resulting Intellectual Property

1.18 During the CRTF period or the subsistence of the Resulting Intellectual Property, the Research Organisation shall not, unless in receipt of the prior written consent of Fight for Sight:

1.18.1 charge or purport to charge or encumber the Research or the Resulting Intellectual Property or any of them; or

1.18.2 sell, assign or otherwise dispose or purport to dispose of the Research or the Resulting Intellectual Property or any of them.

1.19 The Research Organisation undertakes with Fight for Sight, at the Research Organisation's own cost, to:

1.19.1 use all reasonable endeavours to protect and safeguard the Research and the Resulting Intellectual Property throughout the world from and against theft, loss, destruction, or unauthorised access, copying and use and to restrict access thereto to the greatest extent compatible with the exploitation thereof;

1.19.2 notify Fight for Sight forthwith of any infringement or suspected infringement of any of the Research and the Resulting Intellectual Property which may come to the Research Organisation's notice and supply Fight for Sight with such information relating thereto as Fight for Sight shall reasonably require;

1.19.3 commence and prosecute diligently in its own name and at its own expense or, if the Research Organisation is unwilling to do so, to permit Fight for Sight in the Research Organisation's name to commence and/or prosecute such proceedings as may be necessary in respect of the threatened or actual infringement of any of the Research and the Resulting Intellectual Property (all such proceedings to be undertaken at the expense of the Research Organisation);

1.19.4 do all such further acts and things and execute all such further documents, instruments, and deeds as may be required by Fight for Sight to permit it to obtain the benefits contemplated by the Terms or as may be necessary for Fight for Sight to undertake the proceedings referred to in Clause 1.19.3; and

1.19.5 pay all renewal, registration, and other fees necessary for effecting, protecting, maintaining or renewing any registrations required to be made under this Clause 1.19 and do all other acts and things necessary for maintaining the Research and the Resulting Intellectual Property and in default of the Research Organisation making such payments or doing such acts or things, Fight for Sight may make such payments or cause such acts or things to be done and all such monies expended by Fight for Sight shall be deemed to have been properly paid by Fight for Sight and shall be recoverable by Fight for Sight as a debt from the Research Organisation.

Exploitation and Assignment

1.20 The Research Organisation shall take all reasonable steps to exploit the Research and the Resulting Intellectual Property.

1.21 Should the Research Organisation not wish to exploit the Research and/or the Resulting Intellectual Property it shall not later than six months from the date of the completion of the Research or from the creation or (if later) the registration of the Resulting Intellectual Property arising therefrom notify Fight for Sight in writing of its decision and assign to Fight for Sight, with full title guarantee all rights in and to the Resulting Intellectual Property for the full duration of such rights, wherever in the world enforceable.

2. Profit Sharing and the Fight for Sight Income

2.1 In consideration of the payment of the CRTF award the Research Organisation shall pay the Fight for Sight Income to Fight for Sight and/or to any third party nominated in writing by Fight for Sight.

2.2 The Fight for Sight Income will be calculated as follows:

2.2.1 On the first £10,000 Profits, 0 per cent (zero per cent);

2.2.2 On Profits exceeding £10,000, 50 per cent (fifty per cent) of the Profits including for the avoidance of doubt fifty per cent of the initial £10,000.

2.3 If the total cost of any Research (and future research in accordance with Clause 2.4) comprises sums paid by third parties in addition to a CRTF award then the Fight for Sight Income shall be calculated on the same percentage of the Profits as the CRTF award represents as a percentage of the total cost of the Research.

2.4 For the avoidance of doubt, Clause 2.3 shall also apply in relation to Profits received by the Research Organisation where the Research Organisation undertakes future research utilising the Resulting Intellectual Property or any other results from the Research, whether or not funded by Fight for Sight, and such future research results in the creation of further Intellectual Property relevant to the Field which is exploited by the Research Organisation.

2.5 The Research Organisation will pay the Fight for Sight Income to Fight for Sight or as it shall direct in writing within 60 days of the end of the calendar quarter in which the Research Organisation receives the Profits.

2.6 Fight for Sight's right to receive the Fight for Sight Income shall continue for as long as the Research Organisation, its agents and assignees are entitled to receive any financial benefit from either the Research or the Resulting Intellectual Property.

2.7 Any Profits payable to any Researcher employed or contracted to undertake the Research shall be paid from the Research Organisation's share of the Profits.

2.8 Where the Profits include the award of shares then the Research Organisation will ensure that 50% of any shares issued are registered in the name of Fight for Sight or its nominee if so advised by Fight for Sight.

2.9 In the case of a dispute arising between the parties hereto as to the calculation of the Profits or the Fight for Sight Income, the dispute shall be referred to an independent firm of chartered accountants agreed by the parties, or in default of agreement to be appointed (upon the application of either party) by the President for the time being of the Institute of Chartered Accountants of England and Wales.

3. Indemnity

3.1 The Research Organisation shall indemnify Fight for Sight against all losses, damages, liabilities and expenses (including legal expenses) incurred by Fight for Sight as a result of any claim that the Resulting Intellectual Property infringes any Intellectual Property belonging to a third party.

4. Determination

4.1 The Terms shall continue in force for the longer of the continuation of:

4.1.1 the Research; and

4.1.2 the subsistence of the Resulting Intellectual Property.

4.2 Clause 2.6 of the Terms shall remain in full force and effect notwithstanding the termination of the Terms.

5. Right of Examination

5.1 The Research Organisation undertakes:

5.1.1 to keep separate legible and detailed books of account and records relating to the production, promotion, exploitation and sales of the Research and or the Resulting Intellectual Property and shall allow Fight for Sight its employees, agents and professional advisers to inspect audit and take copies of any such books of account, VAT records, bank statements and other records of the Research Organisation but only in so far as they relate to the subject matter of the Terms;

5.1.2 that if the exploitation of the Research or the Resulting Intellectual Property has been contracted to a third party then the Research Organisation shall procure that the rights granted to Fight for Sight under this Clause 5 are honoured by and enforceable against such third party;

5.1.3 to pay all moneys due to Fight for Sight from the Research Organisation from time to time into a separate bank account in Fight for Sight's name and marked 'Fight for Sight Trust Account';

5.1.4 to promptly pay to Fight for Sight any sums identified as having been underpaid as a result of an inspection pursuant to Clause 5.1.1 together with (if the underpayment exceeds the greater of 5% of the whole sum that should have been paid and £1,000) interest at 4% above the base rate for the time being of Barclays Bank Plc calculated from the date payment should have been made to the date of actual payment;

5.1.5 to pay the reasonable professional costs of inspection incurred by Fight for Sight under 5.1.1 in full if interest is paid or payable pursuant to Clause 5.1.4 above.

6. Force majeure

6.1 Neither party shall be liable for any delay in performing or for failure to perform its obligations under this agreement if the delay or failure results from any cause or circumstance beyond its reasonable control, including any breach or non-performance of this agreement by the other party 'Force Majeure Event', provided that the same arises without the fault or negligence of such party.

6.2 If a Force Majeure Event occurs, the date(s) for performance of the obligation affected shall be post-poned for as long as is made necessary by the Force Majeure Event, but if such Force Majeure Event continues for a period of or exceeding three months, either party may terminate this agreement immediately by written notice to the other party.

6.3 Each party shall use its reasonable endeavours to minimise the effects of any Force Majeure Event.

7. Assignment and sub-contracting

7.1 This agreement is personal to the Research Organisation which, except as expressly provided in this agreement, may not, without the prior written consent of Fight for Sight, assign, sub-license, sub-contract, transfer or charge this agreement or any part of it.

8. Relationship of parties

8.1 The relationship of the parties is that of independent contractors dealing at arm's length and nothing in this agreement shall be construed so as to constitute the Research Organisation as an agent or employee of Fight for Sight, and the Research Organisation is not authorised to represent Fight for Sight as such.

9. Notices

9.1 Any notice required to be given under this agreement may be delivered personally or sent by prepaid post, courier, e-mail or transmitted by fax to the other party at the address given at the beginning of this agreement, or such other address as may be notified in accordance with this Clause 9 from time to time.

9.2 Any notice so sent shall be deemed to have been duly given:

9.2.1 if sent by personal delivery or courier, upon delivery at the address of the relevant party;

9.2.2 if sent by prepaid post, four days after the date of posting;
and

9.2.3 if sent by e-mail or by fax, upon confirmation of transmission.

10. Variation

10.1 Any variation of or amendment to this agreement shall only be effective if it is in writing and signed by both parties.

Definitions and Interpretation

The following words and phrases shall have the following meanings unless the context otherwise requires:

‘Background Intellectual Property’	any pre-existing Intellectual Property that is used in performing the Research, whether introduced by the Research Organisation, a Researcher or Fight for Sight;
‘CRTF’	joint MRC/Fight for Sight Clinical Research Training Fellowships
‘Field’	vision research including but not limited to the prevention of blindness, general care of the eye and the treatment of eye disease;
‘Fight for Sight’	the operating name of British Eye Research Foundation a company limited by guarantee (registered in England with number 05525503) and a charity registered with the Charity Commission in England (number 1111438) whose registered office is at 5th Floor, 9-13 Fenchurch Buildings, Fenchurch Street, London EC3M 5HR;
‘Fight for Sight Income’	the share of the Profits payable to Fight for Sight under Clause 2.2;
‘Intellectual Property’	any patents, rights to inventions, registered designs, copyright and related rights, database rights, design rights, topography rights, trademarks, service marks, trade names and domain names, trade secrets, rights in unpatented know-how, rights of confidence and any other intellectual or industrial property rights of any nature including all applications (or rights to apply) for, and renewals or extensions of such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
‘Principal Researcher(s)’	the lead Researcher(s) to whom the Research Organisation delegates responsibility for overseeing and undertaking the Research;
‘Profits’	the net profits received by the Host Institution further to its exploitation of any of the Research and the Resulting Intellectual Property which shall include: (i) the gross income received by the Research Organisation from the exploitation by the Research Organisation of the Research and Resulting Intellectual Property or any identifiable part thereof, less the

Research Organisation's reasonable direct costs arising from such exploitation and any applicable taxes; and
(ii) any shares issued by a third party in consideration of such exploitation

'Research' all research in the Field, whether clinical and/or basic, to be undertaken by the Research Organisation or by any person employed on any basis by the Research Organisation, and which is to be funded either in whole or in part by the Grant, further details of which are included in the Letter;

'Researcher' any person employed by the Research Organisation to undertake the Research

'Research Organisation' the research organisation in receipt of the award

'Resulting Intellectual Property' any Intellectual Property that is created or arises from the Research;