DATED

THE CHANCELLOR MASTERS AND SCHOLARS OF THE UNIVERSITY OF OXFORD

and

[DATA USER]

DATA ACCESS AGREEMENT

relating to the China Kadoorie Biobank
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THIS AGREEMENT is made on 20[●] BETWEEN:

(1) THE CHANCELLOR MASTERS AND SCHOLARS OF THE UNIVERSITY OF OXFORD, whose administrative office is at University Offices, Wellington Square, Oxford, OX1 2JD, United Kingdom (the “University”); and

(2) [INSERT NAME OF DATA USER], whose [registered office / principal place of business / administrative office] is at [insert address] (the “Data User”),

each a “Party” and collectively the “Parties”.

BACKGROUND

(A) The University and the Chinese Academy of Medical Sciences are jointly conducting a project known as the China Kadoorie Biobank.

(B) The purpose of the China Kadoorie Biobank is to investigate the main genetic and environmental causes of common chronic diseases in the Chinese population.

(C) The Data User wishes to have access to certain information and data from the China Kadoorie Biobank and the University has agreed to provide such information and data to the Data User on the terms and conditions of this Agreement.

NOW IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following terms have the following meanings:

“Arising Intellectual Property” means any Intellectual Property Rights created, invented or developed in the course of performing the Permitted Purpose.

“Background Intellectual Property” means any Intellectual Property Rights owned or controlled by either Party that exists as at the date of this Agreement or is created, invented or developed other than in the course of performing the Permitted Purpose.

“CAMS” means the Chinese Academy of Medical Sciences, whose administrative offices are at 9 Dong Dan San Tiao, Dong Cheng District, Beijing 100730, P.R. China.

“CKB Database” means the central database of information created by the University and CAMS, as part of the CKB.

“CKB” means the China Kadoorie Biobank.

“Confidential Information” means the terms and conditions of this Agreement, any confidential information relating to the University, details concerning the CKB, CAMS and the content of the CKB...
“Database” means the data or information, drawn from the CKB Database, which the University will make available to the Data User, as set out in Schedule 1.

“FOIA” has the meaning set out in Clause 13.6.

“Intellectual Property Rights” means any patents, rights to inventions, copyright and related rights, rights in designs, database rights, and all other intellectual property rights and Know-How, in each case whether registered or unregistered and including all applications, and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, 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.

“Know-How” means, to the extent not generally known, any and all non-patentable technical, scientific and other know-how and information, trade secrets, knowledge, technology, means, methods, processes, procedures, practices, formulas, instructions, skills, and/or techniques (however recorded or preserved).

“Other Party” has the meaning set out in Clause 13.6.

“Permitted Purpose” means the sole purpose for which the Data User is permitted to use the Data, as set out in Schedule 2.

“Receiving Party” has the meaning set out in Clause 13.6.

“Results” means any and all discoveries, theories, Know-How, information, data, analyses, interpretations and results derived from the analysis of the Data in the course of the Permitted Purpose or otherwise obtained in the course of performing the Permitted Purpose.

“Term” means the period during which this Agreement has effect, being the period from the date of this Agreement until the date on which this Agreement expires or is terminated, in either case in accordance with Clause 11 below.

1.2 In this Agreement:

1.2.1 the headings are used for convenience only and shall not affect the interpretation of this Agreement;

1.2.2 references to persons shall include incorporated persons and unincorporated persons; references to the singular include the plural and vice versa; and references to the masculine include the feminine;
1.2.3 references to Clause and Schedules means clauses of, and schedules to, this Agreement;

1.2.4 the term “including” means “including, without limitation”; and

1.2.5 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.

2. LICENCE

2.1 In consideration of the obligations accepted by the Data User under this Agreement, the University grants to the Data User during the Term a non-exclusive, personal and non-transferable licence to the Data strictly for the Permitted Purpose.

2.2 All rights not expressly granted to the Data User under this Agreement are reserved by the University. For the avoidance of doubt, this Agreement does not restrict the University’s right to distribute the Data to other third parties.

3. DATA USER OBLIGATIONS

3.1 The Data User shall not:

3.1.1 use the Data other than for the Permitted Purpose in strict conformity with this Agreement and any other reasonable instructions of the University;

3.1.2 except for the Permitted Purpose (or as permitted by law) alter, modify, adapt, delete, add to or translate the whole or any part of the Data, nor permit the whole or any part of the Data to be combined with or become incorporated with any other data or within any other computer program(s) or database of any kind, nor decompile, disassemble or reverse engineer the same nor attempt (or permit any third party to attempt) to do any such thing;

3.1.3 except as may be strictly necessary for carrying out the Permitted Purpose, provide or otherwise make available Data to any third party or allow use of it by or on behalf of any third party, in whole or in part, whether by way of sale, resale, loan, transfer, hire or any other form of exploitation;

3.1.4 unless otherwise expressly agreed in writing by the University, make Data (or allow it to be made) available online, in whole or in part, via the internet or on any intranet;

3.1.5 remove any reference to the University or CAMS or the CKB which may be incorporated into or accompany the Data when provided to the Data User; or
3.1.6 attempt to identify any identifiable living or deceased individual from the Data.

3.2 The Data User shall:

3.2.1 comply with all applicable laws and regulations from time to time in relation to the use of the Data;

3.2.2 promptly notify the University of any unlicensed or other unauthorised use of the whole or any part of any of the Data (whether by the Data User or the Data User’s employees, agents or any third party) which comes to its attention; and

3.2.3 notify the University promptly of any inaccuracies, errors or malfunctions in the Data which come to its attention.

3.3 The Data User shall permit the University to take such steps as the University reasonably considers appropriate to monitor compliance with the terms of this Agreement, and shall co-operate fully with the University in relation to such monitoring.

3.4 The Data User shall promptly submit annual reports (from the date of signature of this Agreement) and any other information reasonably requested by the University to evidence the work undertaken by the Data User in connection with the Permitted Purpose.

4. UNIVERSITY OBLIGATIONS

4.1 Promptly following the date of this Agreement, the University shall provide or make available to the Data User access to the Data in accordance with Schedule 1, subject to Clause 5.3.

4.2 The University shall use reasonable endeavours to notify the Data User of any material errors or faults in the Data which may come to the University’s attention, and (where reasonably appropriate and feasible) to rectify the same. The Data User shall take all such action as the University may require in relation to such error or fault.

5. ACCESS CHARGES

5.1 In consideration of the grant of rights under this Agreement, the Data User shall pay to the University the Access Charges in accordance with Schedule 3.

5.2 Amounts specified for payment in this Agreement are stated exclusive of Valued Added Tax. Whenever the Data User is obliged to make a payment to the University under this Agreement which attracts Value Added, sales, use, excise or other similar taxes or duties, the Data User shall be responsible for paying such taxes and duties.
5.3 This Agreement is conditional on the Access Charges being paid. For the avoidance of doubt, no Data will be provided to the Data User until or unless the Access Charges are received in full.

6. **COMPOSITION OF THE DATA**

6.1 The University reserves the right at any time, without liability to the Data User, to alter, withdraw or delete any item from the Data if, for example (but without limitation):

6.1.1 the University no longer retains the right to publish or allow it to be used;

6.1.2 the University is so required by any judicial, governmental or administrative decision, rule or order;

6.1.3 in the University’s sole discretion, the University believes that there is at least a reasonable chance that publication or use of it would amount to an infringement of copyright, database right, defamation or any other unlawful act; or

6.1.4 the item in question relates to a discontinued line of data within the CKB Database or is otherwise out of date or redundant.

6.2 The Data User shall promptly alter, withdraw or delete any item from the Data, upon notification by the University and in accordance with the University’s instructions. The University shall not be liable for any use that the Data User may make of any discontinued or superseded element of the Data after the notification in question and the Data User shall indemnify and hold harmless the University from and against any claims that may be made by third parties on account of the use made by the Data User of a discontinued or superseded element of the Data.

7. **INTELLECTUAL PROPERTY**

7.1 Nothing in this Agreement does or is intended to grant either Party any right, title, interest in or authorisation to use the other’s Background Intellectual Property save to the limited extent necessary for the performance of this Agreement and the Permitted Purpose. For the avoidance of doubt, all Intellectual Property Rights in the Data are and shall remain at all times the property of the University and CAMS.

7.2 All Arising Intellectual Property shall vest in and be owned by the Data User. The Data User shall promptly disclose in writing to the University any such Arising IP.

7.3 The University is hereby granted an irrevocable, non-transferable, royalty-free right to use all Arising Intellectual Property for academic and research purposes, including research involving projects funded by third parties provided that those parties gain or claim no rights to such Arising Intellectual Property. This right shall be sub-licensable to CAMS and the government of the People’s Republic of China.
8. PUBLICATION

8.1 The University and CAMS shall be entitled to publish on the CKB website:

8.1.1 a summary of the Permitted Purpose (with the exception of any material that has been agreed by the Parties would be kept confidential); and

8.1.2 summary details of the Data User (unless it has been agreed by the Parties that this information would be kept confidential).

8.2 Where the Data User wishes to submit the Results for publication, the Data User will submit such proposed publication to the University for review and comment not less than thirty (30) days in advance of the submission for publication.

8.3 The Data User shall comply with recognised standards concerning publication and authorship, including the *Uniform Requirements for Manuscripts Submitted to Biomedical Journals* issued by the International Committee of Medical Journal Editors.

8.4 The Data User shall include the following acknowledgement in any publication of the Results:

“This research has been conducted using the China Kadoorie Biobank (CKB) Resource (www.ckbiobank.org). Publication of results does not require or imply approval by the membership of the CKB Collaborative Group. The CKB has received funding from the British Heart Foundation, Cancer Research UK, Chinese Ministry of Science and Technology, Chinese National Natural Science Foundation, the Kadoorie Charitable Foundation in Hong Kong, Medical Research Council UK and the Wellcome Trust.”

This acknowledgement should, when possible, be linked to reference search tools (such as PubMed and MEDLINE).

8.5 All publications of the Results in a peer-reviewed journal, or as a scholarly monograph or book chapter, must be made available from PubMed Central and Europe PubMed Central as soon as possible and no later than six months from the date of final publication.

8.6 The Data User shall not use the name or any trademark or logo of the University or CAMS in any press release or product advertising, or for any other commercial purpose, without the prior written consent of the other.

9. CONFIDENTIALITY & DATA SECURITY

9.1 The Data User undertakes to keep the Data and all other Confidential Information strictly confidential and only to use or disclose the same strictly in accordance with the Permitted Purpose (or as may be required by law or a court of competent jurisdiction).

9.2 The Data User shall take appropriate technical and organisational measures against the unauthorised or unlawful processing and/or use of the Data and
Confidential Information, or processing or use beyond the scope of the Permitted Purpose, and against the accidental loss or destruction of, or damage to, such Data and Confidential Information.

9.3 The Data User shall restrict access to the Data and Confidential Information to such of its employees who strictly need to access to such data and/or information to undertake the Permitted Purpose, and shall ensure that all such employees are informed of the confidential nature of such data and/or information and the importance of processing it securely.

9.4 The Data User shall (and shall ensure that its respective officers, employees, agents, advisers and students shall) comply with the requirements of the Data Protection Act 1998 (and related legislation) in conducting the Permitted Purpose.

10. LIABILITY

10.1 Although the University endeavours to use reasonable care in generating, compiling, publishing and providing the Data, the liability of the University for any content (or the use of such content) and any errors, omissions or inaccuracies in such Data, for whatever reason, is limited as set out in this Clause 10.

10.2 Without prejudice to any other provision of this Agreement, the Data User shall be solely responsible and primarily liable for all use of the Data provided to the Data User. The University will not be liable for any loss arising as a result of any reliance placed on the Data.

10.3 Notwithstanding anything else contained in this Agreement, the University shall not be liable to the Data User for: (i) loss of profits or contracts, loss of business or anticipated savings, the cost of substitute services or products, statutory penalties or indirect or consequential loss, in each case whether arising from negligence, breach of contract or howsoever caused whether such loss is foreseeable, foreseen or unknown; (ii) any loss or damage arising from the Data User’s failure to ensure software compatibility with the Data User’s hardware and other software or to carry out appropriate virus checks; or (iii) any loss or damage arising from the Data User’s failure to use the Data strictly in accordance with any instructions set out or made available by the University.

10.4 If notwithstanding the provisions of Clauses 10.1, 10.2 and 10.3, the University is held to be liable to the Data User for any reason, the University’s aggregate liability to the Data User under this Agreement (whether arising from negligence, breach of contract or otherwise) shall not (subject to Clause 10.5) exceed ten thousand pounds sterling (£10,000).

10.5 The University does not exclude liability for death or personal injury to the extent only that the same arises as a result of the negligence of the University, its employees, agents or authorised representatives.
11. **TERMINATION**

11.1 This Agreement may be terminated by the University (with termination taking effect on the expiration of the notice period specified by the University) if:

11.1.1 the Data User commits any material breach or persistent breach of any of the terms of this Agreement and (in the case of a breach capable of being remedied) shall have failed within fourteen (14) days after the receipt of a written request from the University to remedy the same;

11.1.2 the Data User is unable to pay its debts as they fall due or is the subject of a bankruptcy petition or enters into compulsory or voluntary liquidation or compounds with or convenes a meeting of its creditors or has a receiver, manager, administrator or administrative receiver appointed of its assets or ceases for any reason to carry on business.

11.2 This Agreement may be terminated without cause by either Party giving thirty (30) days’ notice in writing to the other, such termination to take effect on the expiration of the thirty (30) day notice period.

12. **CONSEQUENCES OF TERMINATION**

12.1 On expiry or termination of this Agreement for any reason:

12.1.1 all rights and obligations of the Parties (other than any accrued rights of action and liabilities or obligations which expressly or by implication are to come into or continue in force on or after termination of this Agreement including, Clauses 7 and 9) shall automatically cease and terminate; and

12.1.2 unless otherwise agreed in writing by the University, the Data User shall immediately cease all use of any Data and delete all Data from the Data User’s servers and will, at the University’s option, erase, delete or otherwise destroy or return to the University all copies of the Data in whatever format and certify to the University that this has been done.

13. **GENERAL**

13.1 All notices and consents which are required to be given under this Agreement must be in writing and sent to the address of the recipient set out in this Agreement, or any other address which the recipient may designate by notice given in accordance with this Clause 13.1. Any notice may be delivered personally or by first-class pre-paid letter; and will be deemed to have been served, if by hand, when delivered or, if by first-class post, forty-eight (48) hours after posting.

13.2 This Agreement constitutes the entire agreement between the Parties, and supersedes all previous drafts, agreements, arrangements and understandings between the Parties, whether oral or written, relating to its subject matter.
13.3 No change to this Agreement shall be effective unless it is in writing in the English language and signed by the Parties’ authorised representatives.

13.4 If any court of competent authority finds that any provision of this Agreement is invalid, illegal or unenforceable, that provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected. If any invalid, illegal or unenforceable provision of this Agreement would be valid, legal and enforceable if some part of it were modified or amended, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is valid, legal and enforceable, and, to the greatest extent possible, achieves the Parties’ original commercial intention.

13.5 For the avoidance of doubt, nothing in this Agreement shall constitute or create an agency, partnership, joint venture or employment or worker relationship between the Parties.

13.6 The Parties will provide all reasonable co-operation to each other in relation to any request under the Freedom of Information Act 2000 ("FOIA") to disclose any information which relates to the other. If either Party (being a public authority) receives such a request under the FOIA (the “Receiving Party”), it will notify the other Party (the “Other Party”) and will consult with the Other Party. The Other Party will respond to the Receiving Party within seven (7) days after receiving the Receiving Party's notice if that notice requests the Other Party to provide information to assist the Receiving Party to determine whether or not an exemption in the FOIA applies to the information requested under the FOIA.

13.7 Neither Party shall be liable for any failure to fulfil its obligations under this Agreement caused by circumstances beyond its reasonable control, provided that the Party has made all reasonable efforts to fulfil its obligations under this Agreement.

13.8 The Data User may not without the prior written consent of the University, assign, sub-license, sub-contract or otherwise transfer to any third party any of its rights or obligations under this Agreement.

13.9 No person except a Party to this Agreement has any right to prevent the amendment or termination of this Agreement, and no person except a Party to this Agreement and CAMS may enforce any benefit conferred by this Agreement, unless this Agreement expressly provides otherwise.

13.10 This Agreement may be executed in any number of counterparts, each of which when executed will constitute an original of this Agreement, but all counterparts will together constitute the same agreement. No counterpart shall be effective until each Party has executed at least one counterpart.

13.11 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed and construed in accordance with the law of England and Wales; and the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this
Agreement or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS of this Agreement, the Parties have executed this Agreement through their duly authorised representatives.
SIGNED for and on behalf of THE
CHANCELLOR MASTERS AND
SCHOLARS OF THE UNIVERSITY OF
OXFORD

Name:
Title:
Date:

SIGNED for and on behalf of [DATA USER]

Name:
Title:
Date:
SCHEDULE 1 - Data

[Describe clearly the data to be provided by the University to the Data User.]
SCHEDULE 2 - Permitted Purpose

[Describe clearly the purpose(s) for which the Data User is entitled to use the Data.]
SCHEDULE 3 - Access Charges

[Describe clearly the applicable Access Charges.]