

Version: 12 August 2014

DATED

COLLABORATION AGREEMENT

between

MALARIA CONSORTIUM

and

ACARE TECHNOLOGY CO., LTD

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THIS AGREEMENT is dated [DATE]

PARTIES

- (1) Malaria Consortium incorporated and registered in England & Wales (registered Charity No. 1099776; registered Company No. 4785712) whose registered office is at Development House, 56-64 Leonard Street, London EC2A 4LT (**Malaria Consortium**).
- (2) ACARE Technology Co., Limited incorporated and registered in Taiwan whose registered office is at 6F-6, No. 5, Wuquan 1st Road., Xinhung Dist., New Taipei City 242, Taiwan. (**Device Manufacturer**).

BACKGROUND

Malaria Consortium and Device Manufacturer wish to collaborate in the evaluation of a pneumonia diagnostics device provided and/or licensed by the Device Manufacturer as more particularly set out in the Project (defined below) subject to and on the terms and conditions of this agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Affiliate: any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

App: a mobile phone app (whether for Android, Apple or otherwise).

Background Technology: any Technology which is used in connection with the Project created by either party or licensed to it, prior to or outside of the Project.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Confidential Information: the confidential information more particularly defined in clause 5.

Device: the device made, supplied and/or licensed by the Device Manufacturer to be evaluated as part of the Project, which may be an App or a physical device, and as more particularly described in Schedule 1.

Effective Date: [the date of execution of this agreement].

Foreground Technology: any Technology that arises or is obtained or developed by, or by a contractor on behalf of, either party in the course of or in connection with the Project.

Group: in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

holding company: has the meaning given in clause 1.6.

Intellectual Property: patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), semiconductor topography rights, and all other intellectual property rights, 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.

month: a calendar month.

Pneumonia Diagnostics Project: the pneumonia diagnostics project described in Schedule 1.

Project: the collaboration to be carried out by Malaria Consortium and Device Manufacturer as part of the Pneumonia Diagnostics Project, details of which are set out in Schedule 1.

Results: any papers, reports, publications, presentations, learning papers, materials, information or data outputs arising out of or created in connection with the Pneumonia Diagnostics Project.

subsidiary: has the meaning given in clause 1.6.

Technology: products, services, processes, technologies, materials, software, data, innovations, inventions, designs, information, know-how, specifications, formulae, methods, techniques and other technology and all related Intellectual Property.

year: any period of 12 consecutive months.

- 1.2 Unless otherwise specified, references to clauses and schedules are to the clauses of and schedules to this agreement.
- 1.3 Clause and schedule headings are for convenience only and do not affect the interpretation of this agreement.
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

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- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.8 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to **writing** or **written** includes fax and e-mail.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

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- 1.14 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.15 Where any statement is qualified by the expression **so far as [PARTY] is aware** or **to [PARTY]'s knowledge** (or any similar expression), that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.16 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. THE PROJECT

- 2.1 Schedule 1 sets out details of the Project.
- 2.2 Each party shall be responsible for its own costs incurred in connection with the Project, including all labour costs. The parties shall discuss and agree in advance of the commencement of and, where necessary, during the Project their respective responsibilities for the costs of materials and samples, and any costs relating to the procurement or conversion of machinery or equipment provided always that unless otherwise expressly agreed all Devices and all collaboration provided by the Device Manufacturer shall be provided free of charge. Each party, where appropriate, shall submit invoices together with relevant receipts and such invoices shall be settled within 30 days of receipt.
- 2.3 Each party shall comply with its obligations in Schedule 1.
- 2.4 The parties shall each appoint a project manager to assume overall responsibility for their respective roles and obligations under this agreement. The parties' respective project managers will be responsible for (among other things and without prejudice to the underlying ownership of any Technology):
- (a) co-ordinating all work in respect of the Project, including overseeing the performance thereof;
 - (b) arranging and attending (personally or by representative), at each party's own cost, progress meetings as described in clause 2.6 and other meetings, at intervals and locations as agreed between the parties from time to time, to discuss developments and seek to resolve any issues arising. The parties' respective project managers shall use all reasonable endeavours to resolve issues arising under

this agreement, but shall refer all problems which are outside their ordinary authority to resolve to appropriate members of the parties' senior management;

- (c) day-to-day liaison between the parties;
 - (d) identifying and agreeing in writing on behalf of the parties any Background Technology and Foreground Technology used, or to be used, in performing the Project and the owner of the same, prior to or as soon as reasonably practicable following its disclosure in the course of the Project;
 - (e) identifying and agreeing in writing on behalf of the parties any jointly-owned Foreground Technology created or developed, or to be created or developed, in the course of the Project prior to or as soon as reasonably practicable following creation or development of the same in the course of the Project; and
 - (f) such other matters as may be agreed between the parties from time to time.
- 2.5 Either party may replace its appointed project manager at any time on prior written notice to the other party.
- 2.6 The parties agree, at least once every six months during the term of this agreement, or at such other intervals and at such locations as may be agreed between them from time to time, to arrange and attend at their own cost by their duly authorised representatives, including their respective project managers, meetings to discuss and review the progress and status of the Project performed under this agreement, and consider proposals and agree actions in relation to the same with a view to ensuring the due and proper completion of the Project.

3. INTELLECTUAL PROPERTY RIGHTS

- 3.1 Subject to clause 5, each party shall give full disclosure to the other of all Background Technology owned or licensed by it which is relevant to the Project.
- 3.2 All Background Technology is and shall remain the exclusive property of the party owning it (or, where applicable, the third party from whom its right to use the Background Technology has derived).
- 3.3 Subject to clause 3.4, Foreground Technology shall vest in and be owned absolutely by the party creating or developing the Technology in respect of which it arises. To the extent that either party sub-contracts performance of

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the Project, that party shall ensure that any Foreground Technology arising from the work of its sub-contractor shall be assigned to it absolutely.

- 3.4 To the extent that any Foreground Technology arises or is obtained in respect of Technology developed by the parties, it shall be jointly owned in equal and undivided shares by the parties. If any jointly-owned Foreground Technology is registrable, the filing and prosecution of applications for registration shall unless otherwise agreed in writing be on behalf of the parties and in their joint names in such countries and on such terms as the parties may agree in writing both parties acting reasonably and in good faith.
- 3.5 Before publishing any Results relating to the Device Malaria Consortium will first notify the Device Manufacturer and give the Device Manufacturer the opportunity to comment and the Device Manufacturer will have the opportunity to do so within four weeks of Malaria Consortium's notification, provided always that the content of any Results is in the absolute discretion of Malaria Consortium. Where the publication of any Results may prejudice the filing of any patent relating to the Device, the Device Manufacturer will promptly inform Malaria Consortium in writing within the same period of four weeks and the parties will discuss in good faith limiting any public disclosures made or delaying publication in order to permit the filing of any patents provided that publication will not be delayed by more than four weeks.
- 3.6 Each party shall immediately give written notice to the other party of any actual, threatened or suspected infringement of any party's Background Technology or Foreground Technology, whether jointly or solely owned, or any unauthorised use of any party's Technology relating to the Project, of which it becomes aware.

4. EXPLOITATION

- 4.1 Malaria Consortium grants to Device Manufacturer an irrevocable (subject to clause 7.3), royalty-free, non-exclusive, non-transferable, worldwide licence to use Malaria Consortium's Background Technology and Foreground Technology (including any which is jointly-owned) in the performance of the Project and to sub-license any third party to do the same.
- 4.2 Device Manufacturer grants to Malaria Consortium an irrevocable (subject to clause 7.3), royalty-free, transferable, non-exclusive, worldwide licence to use the Device Manufacturer's Background Technology and Foreground Technology (including any which is jointly-owned) in the performance of the Project, and for any purpose in connection with the Pneumonia Diagnostics Project including the publication and dissemination of any Results including on an "open access" basis, and to sub-license any third party to do the same.

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- 4.3 The exploitation of any jointly-owned Foreground Technology (other than as permitted above) shall require the agreement of the parties subject to clauses 4.4 and 4.5 below.
- 4.4 If during this agreement any improvements take place in relation to the Device then the Device Manufacturer will promptly notify Malaria Consortium with the details (so that such improvements can be taken into account of by Malaria Consortium where appropriate and possible in how it conducts the Pneumonia Diagnostics Project) and:
- (a) where the Device is an App and the improvements relate to the look and feel of the App or comprise design features, ideas, know how or techniques relating to the design or use of the App which are not Confidential Information, not the subject of patent applications or patents nor protected by copyright or design rights (**Public Domain Improvements**) then it is agreed that such improvements are irrevocably dedicated to the public domain and nothing in this agreement shall operate to restrict or prevent Malaria Consortium or its partners (including the Bill & Melinda Gates Foundation) or their assigns or licensees from making use of such Public Domain Improvements free of charge;
 - (b) otherwise, if the improvements relate to ideas, know how or techniques relating to the use of the Device (but not its design) which are not Confidential Information, not the subject of patent applications or patents nor protected by copyright or design rights (**Public Domain Improvements**) then it is agreed that such improvements are irrevocably dedicated to the public domain and nothing in this agreement shall operate to restrict or prevent Malaria Consortium or its partners (including the Bill & Melinda Gates Foundation) or their assigns or licensees from making use of such Public Domain Improvements free of charge in using the Device.

Provided always that the parties also undertake to make any jointly-owned improvements arising out of the Project which are not Public Domain Improvements available for licensing and exploitation worldwide to the fullest extent possible on fair reasonable and non-discriminatory terms to assist in ensuring the availability of Devices which may incorporate such improvements.

- 4.5 Where in the course of the Project Malaria Consortium devises improvements to the Device which are Malaria Consortium's sole or jointly owned Foreground Technology then Malaria Consortium will on request be granted by Device Manufacturer a non-exclusive licence of Device Manufacturer's Background Technology on fair reasonable and non-discriminatory terms to the extent necessary to enable Malaria Consortium its licensees and assigns

to exploit such improvements outside of the Project. In addition, where Device Manufacturer wishes to exploit such improvements then Device Manufacturer will on request be granted by Malaria Consortium a non-exclusive licence of Malaria Consortium's Background Technology on fair reasonable and non-discriminatory terms to the extent necessary to enable Device Manufacturer its licensees and assigns to exploit such improvements outside of the Project.

- 4.6 [The Device Manufacturer undertakes to ensure that the Device is made available for purchase and/or licensing and/or manufacture and distribution under licence by Malaria Consortium and its partners and its nominees (including UNICEF, the Bill & Melinda Gates Foundation and their nominees) during the term of this agreement and for a reasonable period thereafter at no greater price or royalty (if any) than that which applied at the Effective Date in order to ensure the most appropriate take up of improved diagnostics tools for pneumonia symptoms in children in the developing world.]
- 4.7 During the term of this agreement and for a reasonable period thereafter the Device Manufacturer undertakes to ensure that Malaria Consortium and its partners and its nominees (including UNICEF, the Bill & Melinda Gates Foundation and their nominees) (**MC Purchasers**) will have the right to purchase and/or license the use of and/or manufacture and distribute the Device (including as improved during or as a result of the Project) on fair, reasonable and non-discriminatory terms in order to ensure the most appropriate take up of improved diagnostics tools for pneumonia symptoms in children in the developing world. [In addition any MC Purchasers will be offered terms at least as favourable as the best terms offered to other persons].

5. CONFIDENTIALITY

- 5.1 The parties each undertake to keep confidential and not to disclose to any third party, or to use themselves other than for the purposes of the Project or as permitted under or in accordance with this agreement (including for the purpose of enjoying the benefit of the rights and licences granted under clause 4), any confidential or secret information in any form expressly identified as such in writing by the disclosing party prior to its disclosure to the receiving party directly or indirectly belonging or relating to the disclosing party, its Affiliates, its or their business or affairs, disclosed by the disclosing party and received by the receiving party pursuant to or in the course of this agreement or the Project (**Confidential Information**).
- 5.2 Each party may disclose the other party's Confidential Information:

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- (a) to its employees, officers, representatives, agents, contractors, funders or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement or for any other valid, justifiable and bona fide reason including to allow Malaria Consortium to communicate with any funders. Each party shall ensure any persons to whom it discloses the other party's Confidential Information are bound by obligations of confidence consistent with this clause 5; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

5.3 The obligations contained in this clause 5 shall survive the expiry or termination of this agreement for any reason, but shall not apply to any Confidential Information which:

- (a) is publicly known at the time of disclosure to the receiving party; or
- (b) becomes publicly known otherwise than through a breach of this agreement by the receiving party, its officers, employees, agents or contractors; or
- (c) can be proved by the receiving party to have reached it otherwise than by being communicated by the other party including:
 - (i) being known to it prior to disclosure; or
 - (ii) having been developed by or for it wholly independently of the other party; or
 - (iii) having been obtained from a third party without any restriction on disclosure on such third party of which the recipient is aware, having made due enquiry; or
- (d) is required by law, regulation or order of a competent authority (including any regulatory or governmental body or securities exchange) to be disclosed by the receiving party, provided that, where practicable, the disclosing party is given reasonable advance notice of the intended disclosure.

5.4 Nothing in this Clause 5 shall operate to prevent or restrict the publication of any Results.

6. WARRANTIES

6.1 Each of the parties warrants that:

- (a) it has full power and authority to carry out the actions contemplated under this agreement, and that its entry into and performance under the terms of this agreement will not infringe the rights of any third

party or cause it to be in breach of any obligations to a third party. Without limitation, each of the parties warrants that it will acquire all rights in any Foreground Intellectual Property obtained or developed by any third party contractors in the course of or in connection with the Project, or will be duly authorised to license the same as contemplated under this agreement;

- (b) it will perform the Project in a professional manner with reasonable skill and care, using suitably qualified personnel, and will use all reasonable endeavours to achieve the objectives of the Project;
- (c) all information, data and materials provided by it to the other pursuant to this agreement will be, to the best of its knowledge, accurate and complete in all material respects, and it is entitled to provide the same to the other without recourse to any third party; and
- (d) without limitation to the foregoing, its use of the Background Technology does not, so far as it is aware, infringe the rights of any third party. It will use all reasonable endeavours to ensure that its use of the Foreground Technology will not infringe the rights of any third party. No third party has threatened or, so far as it is aware, is currently threatening proceedings in respect of such infringement, and none of its Background Technology is the subject of any actual or, so far as it is aware, threatened challenge, opposition or revocation proceedings.

6.2 The Device Manufacturer warrants that so far as it is aware the Device is safe and suitable for use in the Project when used in accordance with the Device Manufacturer's instructions as they have been notified to Malaria Consortium in writing. The Device Manufacturer will promptly inform Malaria Consortium in the event of any breach of the foregoing warranty.

6.3 Except as expressly provided in this agreement, there are no conditions, warranties or other terms binding on the parties with respect to the actions contemplated by this agreement. Any condition, warranty or other term in this regard which might otherwise be implied or incorporated into this agreement, whether by statute, common law or otherwise, is, insofar as it is lawful to do so, hereby excluded.

7. TERM AND TERMINATION

7.1 This agreement shall come into effect on the Effective Date and, subject to the remaining terms of this agreement, shall continue in full force and effect for the duration of the Project.

- 7.2 Either party shall be entitled to terminate this agreement at any time, including during the currency of the Project, by notice in writing to the other if:
- (a) the other party is in material breach of this agreement which breach is irremediable or, if remediable, is not remedied by the defaulting party within 30 days of being requested to do so by the other. If either party submits an application to register any registrable jointly-owned Foreground Intellectual Property without first consulting and obtaining the written agreement of the other party, such party shall be deemed to be in material breach of this agreement; or
 - (b) the other party ceases to do business, becomes unable to pay its debts as they fall due, becomes or is deemed insolvent, has a receiver, liquidator, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business (or is the subject of a filing with any court for the appointment of any such officer), makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction), or any equivalent or similar action or proceeding is taken or suffered in any jurisdiction and the same is not dismissed or discharged within 30 days thereafter; or
 - (c) the other party is in breach of any of its confidentiality obligations under clause 5; or
 - (d) the other party challenges or disputes the validity or ownership of any of the terminating party's Background Intellectual Property or Foreground Intellectual Property.
- 7.3 The licences granted to the parties under this agreement shall continue notwithstanding any expiry or termination of this agreement and shall be without limit of period, save that either party (**Terminating Party**) may (in its absolute discretion) terminate the licence(s) granted by it to the other party (**Defaulting Party**) immediately by notice in writing to the Defaulting Party if:
- (a) the Defaulting Party uses or permits any third party to use the Terminating Party's Technology outside the scope of such licences, without the Terminating Party's prior written consent; or
 - (b) the Defaulting Party or any of its Affiliates commits any breach of clause 5 in relation to the Terminating Party's Confidential Information; or
 - (c) the Defaulting Party ceases to do business, becomes unable to pay its debts as they fall due, becomes or is deemed insolvent, has a receiver, liquidator, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business (or is the subject of a filing with any court for the

appointment of any such officer), makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction), or any equivalent or similar action or proceeding is taken or suffered in any jurisdiction and the same is not dismissed or discharged within 30 days thereafter; or

- (d) the Defaulting Party challenges or disputes the validity or the Terminating Party's ownership of any of the Terminating Party's Foreground Intellectual Property or Background Intellectual Property.

7.4 Expiry or termination of this agreement or termination in accordance with this clause 7 shall be without prejudice to the rights of the parties accrued at the date of expiry or termination and, in the case of termination of any licences under clause 7.3 or clause 8.3, without prejudice to any licences granted by the Defaulting Party to the Terminating Party, which shall remain in full force and effect. Clauses 4, 5, 7, 8, 9, 10, 11-19, 21 shall survive the expiry or termination of this agreement for any reason.

7.5 On termination of any licences granted under this agreement in accordance with this clause 7 or clause 8.3, each party shall immediately destroy or, at the request of the other party, return all information and materials belonging to the other party then in its or its contractors' possession, custody or control, including all Confidential Information of the other party relating to such licences with the exception, in the case of the Terminating Party, of such information and materials belonging to the Defaulting Party as are reasonably required by the Terminating Party to enjoy the benefit of any continuing licences granted to it under this agreement, and shall not retain any copies of the same.

8. THIRD PARTY RIGHTS

8.1 Each party shall immediately give written notice to the other of any challenge to any party's Intellectual Property rights by a third party which comes to its knowledge.

8.2 Subject to the remainder of this clause 8, each party (**Indemnifying Party**) shall, at its own expense, defend (or, at its option, settle) any action brought against the other (**Indemnified Party**) which consists of a claim that the use of the Indemnifying Party's Technology for any activity contemplated under this agreement infringes any Intellectual Property right belonging to a third party. The Indemnifying Party agrees to be responsible for, and to indemnify the Indemnified Party against, all losses, costs (including reasonable legal costs), damages, liabilities, claims and expenses suffered or incurred by the

Indemnified Party in connection with any such claim. The Indemnifying Party's obligations under this clause 8.2 shall be conditional on the Indemnified Party:

- (a) immediately giving written notice to the Indemnifying Party of such claim;
- (b) giving the Indemnifying Party express authority to proceed as contemplated by this clause 8.2; and
- (c) providing the Indemnifying Party with all such information and assistance as it may reasonably require.

8.3 In addition to, and without prejudice to, clause 8.2, in the event that the use of the Indemnifying Party's Technology for any activity contemplated under this agreement infringes any Intellectual Property Right belonging to a third party, the Indemnifying Party shall, at its own expense, use its best endeavours either to modify its Technology to be non-infringing or to obtain, at its own expense, for the other party a licence to continue using the Indemnifying Party's Technology. In the event that the parties reasonably agree that it is not possible either to modify the Indemnifying Party's Technology to be non-infringing, or to obtain for the other parties a licence to continue using the Indemnifying Party's Technology, then the Indemnified Party may terminate this agreement and all licences granted pursuant to it immediately on written notice, and the parties shall co-operate with respect to an orderly termination of the same. Termination under this clause 8.3 shall be without prejudice to the rights of either party accrued at the date of termination.

8.4 This clause 8 states the entire obligation and liability of the Indemnifying Party, and the sole remedy of the Indemnified Party, in respect of any infringement or alleged infringement of any Intellectual Property right by the use of the Technology.

9. FORCE MAJEURE

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for three months, the party not affected may terminate this agreement by giving written notice to the affected party.

10. ASSIGNMENT AND OTHER DEALINGS

10.1 Subject to the further provisions of this clause 10 and any provisions of this agreement to the contrary, neither party shall assign any or all of its rights and

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obligations under this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

10.2 Either party may, after having given prior written notice to the other party, assign any or all of its rights and obligations under this agreement to a member of its Group for so long as that company remains a member of the assignor's Group.

10.3 Either party may, after having given prior written notice to the other party, assign and transfer all of its rights and obligations under this agreement to any person to which it transfers that part of its business to which this agreement relates, provided that the assignee undertakes in writing to the other party to be bound by the obligations of the assignor under this agreement.

11. NO PARTNERSHIP OR AGENCY

11.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

12. NOTICES

12.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

- (a) delivered by hand at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by fax to its main fax number.

12.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by fax, at 9.00 am on the next Business Day after transmission.

12.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

13. VARIATION

No variation of agreement shall be effective unless it is made in writing and signed by both parties. Both parties shall, at all times, remain willing to discuss possible contractual variations that have been prompted by technical or other factors, although neither party shall have any obligation to agree to any such variation proposed.

14. WAIVERS

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15. GOVERNING LAW

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 by and construed in accordance with the law of England and Wales.

16. JURISDICTION

~~Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).~~

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17. SEVERANCE

17.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

17.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

18. ENTIRE AGREEMENT

- 18.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 18.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 18.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 18.4 Nothing in this clause shall limit or exclude any liability for fraud.

19. SURVIVAL

Provisions of this agreement which are either expressed to survive its termination or, from their nature or context it is contemplated that they are to survive such termination, shall remain in full force and effect notwithstanding such termination.

20. FURTHER ASSURANCE

At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

21. THIRD PARTY RIGHTS

21.1 Except as expressly provided elsewhere in this agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

21.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

This agreement has been entered into on the date stated at the beginning of it by the duly authorised representatives of the parties:

Signed by Jocelyn Boughton
for and on behalf of Malaria Chief Finance Officer
Consortium

Signed by [NAME OF DIRECTOR]
for and on behalf of ACARE Director
Technology Co., Ltd.]

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Schedule 1 The Project

Background to the Project

Malaria Consortium are undertaking a pneumonia diagnostics project (**Pneumonia Diagnostics Project**) entitled: *Use of improved tools for measuring respiratory rate and oxygen saturation among community health workers (CHWs): Sub-Saharan Africa and Southeast Asia*

The Goal of the Pneumonia Diagnostics Project is: *to identify the most accurate, acceptable, scalable and user-friendly Devices both respiratory rate (RR) timers and pulse oximeters (POx) for diagnosis of pneumonia symptoms by CHWs and first-level health facility workers (FLHFWs) in four low-income countries.*

Timescales: November 2013 – June 2015 (6 research Stages)

The objectives of the Pneumonia Diagnostics Project are:

Obj 1: To systematically review the landscape for existing RR mobile phone apps, automated RR timing tools and POx devices appropriate for low resource settings.

Obj 2: To identify, using pre-defined criteria, the most promising and appropriate devices for field-testing in Sub-Saharan Africa and South-East Asia.

Obj 3: To establish the accuracy of the RR timing/classification device to diagnose symptoms of pneumonia and the POx devices to measure oxygen saturation, respectively, when used by CHWs and first level health facility workers in Sub-Saharan Africa and South-East Asia

Obj 4: To explore the acceptability and usability of existing RR mobile phone apps, automated RR timing tools and POx devices as perceived by caregivers, CHWs and FLHFWs.

Further details of the Pneumonia Diagnostics Project are attached.

The Project

As part of the Pneumonia Diagnostics Project the Device Manufacturer will collaborate in providing and/or licensing the supply of the following Device free of charge in sufficient quantities to allow it to be used in, and for the purposes contemplated by, the Pneumonia Diagnostics Project:

Lifebox pulse oximeter Handheld Type Model No. AH-M1

In addition the Device Manufacturer shall:

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- Provide free of charge, either itself or through Lifebox, all cooperation and assistance reasonably required by Malaria Consortium in connection with the Project and its use in the Pneumonia Diagnostics Project including in relation to any aspect of the Pneumonia Diagnostics Project that may be considered to be a clinical trial
- Provide their devices, at a reduced charity rate to be agreed, to Malaria Consortium on the condition that Malaria Consortium send an official receipt letter confirming the donation of the devices to the project
- In carrying out the Project the Device Manufacturer agrees that Malaria Consortium may liaise directly with Lifebox and provide information relating to the Project to Lifebox on the basis that Lifebox is authorised to act on behalf of the Manufacturer for the purposes of the project.