Dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_20[●]

1. [*Full legal name of the RPO*]

and

1. [*Full legal name of the Industry Party*]

MODEL COLLABORATIVE research AGREEMENT

(PART industry-funded)

**COLLABORATIVE RESEARCH AGREEMENT**

**(PART industry-funded)**

This agreement is for use for collaborative research between an RPO and an industry partner which is funded partly by the State and partly (in cash and/or in kind, including
participation in the research itself) by the industry partner

**This Agreement** dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20[●] is between:

1. [●] (the “**RPO**”); [an academic institution incorporated *or* established under [statute *or* charter in Ireland],] whose [principal address *or* registered office] is at [●] and
2. [●] (the “**Industry Party**”), [a company *or* insert relevant entity type incorporated in [•] with registration number [•],] whose [principal place of business *or* registered office] is at [•].

**Background:**

1. The Industry Party is engaged in the research and development of [•].
2. The Industry Party wishes to collaborate with the RPO in respect of the Project and has agreed to provide the Industry Contribution in respect of the Project in each case upon the terms and subject to the conditions of this Agreement.
3. Grant co-funding for the Project has been obtained from the State Research Funding Organisation.

**The Parties agree** as follows:

## Interpretation

* 1. *Definitions.* In this Agreement (and the background recitals above), unless the context requires otherwise or unless otherwise specified the following words shall have the following meanings:

|  |  |
| --- | --- |
| **Affiliate** | In relation to a Party, means any entity or person that Controls, is Controlled by, or is under common Control with that Party. |
| **Background IP** | Any Intellectual Property in the same or related fields to the research contemplated by this Agreement, developed, owned, licensed to or otherwise controlled by a Party prior to the Commencement Date or generated by that Party independently of the Project and, in each case, made available by that Party for use in connection with the Project in accordance with the process set out at Clause 4.2. A list of Background IP as at the date of this Agreement is set out in Schedule 3. |
| **Commencement Date** | The commencement date as set out in Schedule 1. |
| **Completion Date** | The completion date as set out in Schedule 1. |
| **Confidential Information** | Any information relating to the business, affairs, technology, products or processes of a Disclosing Party that:* + - 1. in respect of information provided in documentary form or by way of a model or in other tangible form, at the time of provision is marked or otherwise designated to show expressly or by necessary implication that it is imparted in confidence;
			2. in respect of information that is imparted orally, described by the Disclosing Party or its representatives to the Receiving Party as being confidential at the time of disclosure [and confirmed in writing, marked confidential and sent to the receiving party within [28] days of the oral disclosure];
			3. is a copy of any of the foregoing; or
			4. due to its character or nature, a reasonable person in a like position to the Receiving Party and under like circumstances would consider confidential.
 |
| **Control** | Possession of the power to direct or cause the direction of the management and policies of a person whether by membership, ownership, contract or otherwise. “Controlled”, “Controls” and other cognate words and expressions shall be construed accordingly. |
| **Disclosing Party** | The Party disclosing Confidential Information to the other Party in connection with the Project. |
| **Event of Force Majeure** | Circumstances beyond the reasonable control of any Party, including labour disputes involving that Party, which may lead to a delay or failure of performance of obligations under this Agreement. |
| **Evaluation Exercise** | The process of evaluating the Foreground IP, including the carrying out of investigations, development and experimental work, for the proposes of assessing the commercial potential of the Foreground IP under the terms of clause 4.10 |
| **Exercise Notice** | Written notice from the Industry Party to the RPO that it wishes to exercise the Option. |
| **Export Control Rules** | Any export and import laws and associated embargo and economic sanction regulations, including those administered by Ireland, the EU and the United States to the extent they apply to a Party’s activities under this Agreement. |
| **Fees** | The fees to be paid to the RPO by the Industry Party as set out in Schedule 2. |
| **FOIA** | The Freedom of Information Act 2014, as amended, revised, modified or replaced from time to time. |
| **Foreground IP** | All Intellectual Property generated by the Parties in the performance of the Project. For the avoidance of doubt, Foreground IP shall include any Non-Severable Improvements. |
| **Government-related Bodies** | Irish Government departments, agencies or State research funding organisations to which the RPO may need to report on their activities, which may include, but are not limited to: the Higher Education Authority; Enterprise Ireland (EI); Science Foundation Ireland (SFI). |
| **Grant** | The grant from the State Research Funding Organisation to the RPO for the purpose of carrying out the Project and its associated terms and conditions. |
| **Industry Contribution** | The total contribution of the Industry Party to the Project, including the Fees plus the monetary equivalent of any in-kind contributions as set out in Schedule 2. |
| **Industry Non-Severable Improvement** | Any Non-Severable Improvement to any Significant Background of the Industry Party. |
| **Intellectual Property (IP)** | All intellectual property of any description including Know-How, copyright, trade marks, database rights, design rights, patents, utility models, and applications for, and the right to apply for any of the foregoing items. |
| **Know-How** | Any unpatented technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain. |
| **Licence** **Field** | [•] |
| **Licence Territory** | [•] |
| **Negotiation Period** | [90] days from and including the date of the Exercise Notice, being the period within which the parties must negotiate and conclude a licence. |
| **Non-Severable Improvement** | IP generated by any Party in the performance of the Project where, at a minimum, the IP in question: (i) was created using Significant Background; and (ii) cannot be used without infringing the Significant Background. |
| **Notice Party** | A Party in respect of whom notice of termination is issued by the other Party pursuant to Clause 10.1. |
| **Option** | Any option to negotiate a licence to Intellectual Property (or in the case of Industry Non-Severable Improvements, an assignment) granted by the RPO to the Industry Party pursuant to Clauses 4.7 4.8, 4.10 or 4.11. |
| **Option Period** | For Foreground IP, [90] days from and including the date of formal notification of the creation of the Foreground IP in question.For Background IP, the term of the Project.  |
| **Parties** | The RPO and the Industry Party, and “**Party**” shall mean either of them. |
| **Personnel** | The officers, directors, employees, contractors, researchers or registered students of a Party and those of its Affiliates.  |
| **Principal Investigator** | [●], the lead researcher from the RPO for the Project. |
| **Project** | The programme of work to be carried out by the Parties as described in the project plan in Schedule 1 |
| **Project Foreground IP** | All Foreground IP arising in the Project excluding any Industry Non-Severable Improvements. |
| **Publishing Party** | Any Party intending to publish any results of the Project.  |
| **Receiving Party** | The Party receiving Confidential Information from the other Party in connection with the Project. |
| **Restricted Material** | Any technical data, technology, services, products or materials that are subject to Export Control Rules. |
| **Reviewing Party** | The Party other than the Publishing Party.  |
| **RPO Non-Severable Improvement** | Any Non-Severable Improvement to any Significant Background of the RPO. |
| **Significant Background** | A Party's Background IP used in the Project will constitute "Significant Background" where: (i) it is the subject of a granted patent; and/or (ii) the Project substantially relies on this Party's Background IP and without it the Project would be difficult or impossible to carry out. A list of Significant Background as at the date of this Agreement is set out in Schedule 3. |
| **State Research Funding Organisation** | [●] |

* 1. *Construction.* In this Agreement, unless the context requires otherwise:
		1. the headings are used for convenience only and shall not affect its interpretation;
		2. references to persons shall include incorporated and unincorporated persons; references to the singular include the plural and vice versa; and references to either gender include the other and the neuter;
		3. references to Clauses and Schedules mean clauses of, and schedules to, this Agreement;
		4. references in this Agreement to termination shall include termination by expiry;
		5. where the word “including” is used it shall be understood as meaning “including without limitation”;
		6. time shall be construed by reference to time in Ireland;
		7. ‘this Agreement’ mean the Clauses of, and the Schedules to, this Agreement, all of which shall be read as one document; and
		8. ‘business day’ shall be construed as a reference to a day (other than a Saturday or Sunday) on which the banks are generally open for business in Ireland.
	2. If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.

## Scope of the Project

* 1. *Project.* The Parties shall carry out the Project according to the project plan described in Schedule 1. The Project shall be carried out under the direction and supervision of the Principal Investigator. Each of the Parties shall use all reasonable endeavours to obtain all regulatory and ethical licences, consents and approvals necessary to allow it to carry out the tasks allotted to it in Schedule 1.
	2. *Duration.* The Project shall be carried out from the Commencement Date until the Completion Date or until such later date as may be agreed in writing between the Parties, or until it is terminated in accordance with the terms of this Agreement.
	3. *Grant*. The Industry Party acknowledges that the RPO is bound by the terms and conditions of the Grant, and agrees to reasonably cooperate with the RPO so as to ensure that the conduct of the Project complies with the Grant and the RPO’s obligations thereunder by complying with the terms described in Schedule 4. The Industry Party further agrees to make any reasonable necessary amendments to this agreement if the terms of the Grant are altered.

## Project costs and contributions

* 1. *Invoices.* The RPO shall provide the Industry Party with invoices for the Fees due to the RPO in accordance with the payment schedule set out in Schedule 2.
	2. *Payment.* The Industry Party shall pay all valid invoices in accordance with the provisions of Schedule 2. Interest shall be automatically applied in the event of late payment in accordance with the provisions of Schedule 2.
	3. *Currency and VAT.* All amounts stated are to be paid in Euro. The Industry Contribution is exclusive of value added tax (if applicable) which, subject to the provision of a valid value added tax invoice, shall be paid by the Industry Party in addition.

## Intellectual Property

* 1. *Background IP.* Each Party shall retain all right and title to, and interest in its own Background IP. Nothing in this Agreement shall affect ownership of any Background IP. No licence to use any Background IP is granted or implied by this Agreement except the rights expressly granted in this Agreement.
	2. *Register of IP.*
		1. Schedule 3 sets out a list of Background IP that the Parties have agreed to make available for the Project as at the date of this Agreement, together with details of any restrictions or encumbrances on the use of that Background IP and whether that Background IP is Significant Background.
		2. Any Party wishing to make available Background IP for use in the Project after the date of this Agreement shall provide the other Party with a written description of the Background IP together with details of any restrictions or encumbrances on the use of that Background IP. The Parties shall also agree whether that Background IP is Significant Background. The introduction of any such Background IP shall be subject to the prior written approval of the other Party (such approval shall not be unreasonably withheld or delayed).
		3. The RPO shall maintain a register of Background IP contributed to the Project detailing the name of the contributing Party together with details of any restrictions or encumbrances on its use specified by the contributing Party.
		4. No Party may withdraw or make any amendments to the terms and conditions of any Background IP without the prior written approval of the other Party (such approval shall not be unreasonably withheld or delayed).
	3. *Use of Background in the Project.* Each Party grants to the other Party and its Affiliates a royalty-free, non-exclusive licence to use, and permit its Personnel who are involved in the Project to use, its Background IP for the purposes of carrying out the Project, but for no other purpose. Neither Party may grant any sub-licence to use the other Party’s Background IP.
	4. *Notification of results.* Each of the Parties shall notify the other promptly after identifying any experimental result that it believes is patentable or otherwise protectable, and will supply copies of those results. All other experimental results will be reported according to the reporting arrangements in the Project plan described in Schedule 1.
	5. *Personnel.* Each Party shall ensure that all its Personnel involved in the Project:
		1. maintain adequate and secure records, either electronically or in laboratory books, for the purpose of establishing intellectual contribution, authorship and/or inventors and invention dates;
		2. assign any rights they may have in any Foreground IP to it in order to be able to give full effect to the provisions of this Agreement; and
		3. otherwise comply with the obligations of that Party under this Agreement.
	6. *Foreground IP.* Subject to Clause 4.7, all right and title to, and any interest in, any and allProjectForeground IP shall vest and remain vested in the RPO. To the extent that any Project Foreground IP is capable of prospective assignment, the Industry Party now assigns that Project Foreground IP to the RPO; and to the extent that any Project Foreground IP cannot be prospectively assigned, shall assign such Project Foreground IP as and when that Project Foreground IP is created, at the request of the RPO from time to time. At the request and expense of the RPO, the Industry Party shall execute such documents as may be necessary to transfer title to the RPO and apply for patents or other protections for such Project Foreground IP.
	7. *Industry Non-Severable Improvements.*
		1. In consideration of the performance by the Industry Party of its obligations under this Agreement, the Industry Party shall have the right during the Option Period to acquire an assignment of any Industry Non-Severable Improvements at fair market rates.
		2. It is agreed that the fair market rate shall not exceed the value of the Industry Contribution made by the Industry Party at the date of the assignment to the extent that the Industry Party has not previously received a credit to the full value of that contribution and provided that this does not give rise to an unlawful state aid (within the meaning of Articles 107 to 109 of the Treaty on the Functioning of the European Union).
	8. *Access rights* **-** *Option to an exclusive/non-exclusive licence*
		1. The RPO grants to the Industry Party an exclusive option during the Option Period to elect to negotiate a licence in the Licence Field in the Licence Territory to the Project Foreground IP.
		2. Any such licence shall:
			1. be on fair and reasonable commercial terms;
			2. be concluded by way of a separate licence; and
			3. include, without limitation, terms based on the provisions of Schedule 5.

For the avoidance of doubt, the terms in Schedule 5 are provided for the purposes of developing a licence and no provision of Schedule 5 is intended to be or is legally binding on any person.

* + 1. Any such licence shall be in consideration of the performance by the Industry Party of its obligations under this Agreement and subject to the Industry Contribution made by the Industry Party being in excess of the relevant minimum contribution level as set by the State Research Funding Organisation and being made in full.
	1. **[Start of Discretionary NERF Clause***Access rights – Right to a non-exclusive royalty-free (NERF)*
		1. At the request of the Industry Party, the RPO agrees to grant to the Industry Party on conclusion of the Project, a non-exclusive royalty free (NERF) licence in the Licence Field in the Licence Territory to the Project Foreground IP [excluding the RPO Non-Severable Improvements].
		2. Any such licence shall be delivered in a separate agreement and concluded on completion of the Project.
		3. Any such licence shall be granted in consideration of the performance by the Industry Party of its obligations under this Agreement and subject to the Industry Contribution paid by the Industry Party being in excess of the relevant minimum contribution level as set by the State Research Funding Organisation, and being made in full,

**End of Discretionary NERF clause]**

* 1. *Evaluation licence.*
		1. In consideration of the performance by the Industry Party of its obligations under this Agreement, the RPO hereby grants to the Industry Party [an exclusive][a non-exclusive] non-transferable, non-sub-licensable, royalty-free licence during the Option Period or such other period as both parties may agree to use the Project Foreground IP for the limited purpose of performing the Evaluation Exercise.
		2. This Evaluation Exercise shall be subject to the provisions of this Agreement,
		3. The Industry Party shall promptly disclose to the RPO the information resulting from the Evaluation Exercise.
	2. *Access to RPO Background for commercial purposes.* To the extent that a licence to any RPO Background IP is legally or technically necessary in order to commercially exploit the Foreground IP, the Industry Party shall have the option during the Option Period to negotiate and conclude a non-exclusive licence to the RPO Background IP provided that the RPO has not indicated otherwise in Schedule 3 or pursuant to Clause 4.2. Any such licence shall be on fair and reasonable commercial terms.
	3. *Procedure for the exercise of Options:*
		1. If the Industry Party wishes to exercise an Option, it shall give an Exercise Notice to the RPO prior to the expiry of the applicable Option Period. No Option may be exercised more than once in respect of the same IP.
		2. Upon receipt of an Exercise Notice, the Parties acting reasonably shall promptly enter into negotiations in good faith with a view to the conclusion of a licence agreement (in the case of an Industry Non-Severable Improvement, an assignment) in respect of the relevant Intellectual Property during the Negotiation Period.
		3. If the Industry Party does not exercise its Option during the applicable Option Period or the Parties are unable to agree the terms of a licence agreement (in the case of an Industry Non-Severable Improvement, an assignment) within the Negotiation Period and subject to either Party’s right to refer the matter under Clause 11 that Option shall lapse.
	4. *Research rights.* Notwithstanding the provisions of Clause 4.7 or the grant of any exclusive licence to Project Foreground IP, the RPO shall have a non-exclusive, irrevocable, perpetual, royalty free right to utilise the Foreground IP for internal teaching and research, but for no other purpose. The rights of the RPO under this Clause 4.13 are subject to the confidentiality restrictions in Clause 5 and the rules on publication in Clause 6.
	5. *IP protection.* The RPO shall consult with the Industry Party in respect of the IP protection strategy and associated costs for the Project Foreground IP, including application for patents or other protections. The RPO shall be responsible for the costs of such IP protection until the Project Foreground IP is licensed to the Industry Party, and any such licence shall include terms that relate to ongoing IP costs and/or the reimbursement of [a contribution to] the previous direct costs of this IP protection.
	6. *Step-in rights.* If the RPO chooses not to file, prosecute or maintain any IP protection for the Foreground IP, the RPO shall give the Industry Party notice within a reasonable period prior to the potential loss of rights, and if the Industry Party so requests, the RPO shall (at the cost and expense of the Industry Party) prepare, file, prosecute and maintain such IP protection as the Industry Party sees fit.
	7. *State Aid*. The grant of any assignment of, or licence to, Intellectual Property pursuant to Clauses 4.7, 4.8, [4.9] or 4.11 is subject to compliance with EU state aid rules and the Parties shall use all reasonable endeavours to ensure that the terms of any such assignment or licence do not give rise to unlawful state aid.

## Confidentiality

* 1. *Confidentiality obligations.* Each Receiving Party undertakes:
		1. to maintain as secret and confidential all Confidential Information obtained directly or indirectly from the Disclosing Party in the course of or in anticipation of this Agreement and to respect the Disclosing Party’s rights therein;
		2. to use such Confidential Information only for the purposes of this Agreement;
		3. to disclose such Confidential Information only to those of its Personnel, professional advisers, Affiliates and sub-licensees pursuant to this Agreement (if any) to whom and to the extent that such disclosure is reasonably necessary for the purposes of this Agreement; and
		4. to ensure that all those to whom disclosure of or access to such Confidential Information has been given, including its Personnel, professional advisers, Affiliates and sub-licensees, comply with the provisions of this Agreement, and the Receiving Party shall be liable to the Disclosing Party for any breach of this Agreement by any of the foregoing.
	2. *Exceptions to obligations.* The provisions of Clause 5.1 shall not apply to Confidential Information which the Receiving Party can demonstrate by reasonable, written evidence:
		1. was, prior to its receipt by the Receiving Party from the Disclosing Party, in the possession of the Receiving Party and at its free disposal; or
		2. is subsequently disclosed to the Receiving Party without any obligations of confidence by a third party who has not derived it directly or indirectly from the Disclosing Party; or
		3. is independently developed by the Receiving Party by individuals who have not had any direct or indirect access to the Disclosing Party’s Confidential Information; or
		4. is or becomes generally available to the public through no act or default of the Receiving Party or its agents, Personnel, or Affiliates.
	3. *Disclosure in accordance with legal obligations.* To the extent that the Receiving Party is required to disclose any of the Disclosing Party’s Confidential Information by order of a court or other public body that has jurisdiction over it or under other statutory or regulatory obligations it may do so, provided that, before making such a disclosure the Receiving Party shall, unless it is prohibited from so doing by law:
		1. inform the Disclosing Party of the proposed disclosure as soon as possible, in any event, no later than five (5) business days after becoming aware of the proposed disclosure; and
		2. cooperate with the Disclosing Party's reasonable, lawful efforts to resist, limit or delay such disclosure (at the cost and expense of the Disclosing Party).

Disclosure of any Confidential Information pursuant to any such order or requirement shall not be deemed to render it non-confidential and the Receiving Party’s obligations with respect to such Confidential Information shall not be changed or lessened by virtue of any such disclosure, unless such disclosure results in one or more of the exceptions listed in Clause 5.2 above applying to that Confidential Information.

* 1. *Freedom of Information Act*. The Industry Party acknowledges and agrees that the RPO is subject to FOIA and the codes of practice issued under FOIA as may be amended, updated or replaced from time to time. The Industry Party agrees that all requests under FOIA relating to this Agreement and any other relevant records will be processed by the RPO under the terms of FOIA. The RPO and the Industry Party shall communicate and cooperate in relation to the processing of any requests under FOIA*.*
	2. *Notice of breach*. Each Party shall give notice to each of the other Party of any unauthorised use, disclosure, theft or other loss of that other Party’s Confidential Information as soon as is practicable after becoming aware of it.
	3. *Duration of obligations.* The obligations of confidentiality and non-use set out in this Clause 5 shall survive termination of this Agreement for any reason for a period of [five (5)] years from the date of termination.

## Publication

* 1. *Prior consultation.* Each Publishing Party shall submit its proposed publication in writing to the Reviewing Party at least 30 days before submitting it for publication.
	2. *Delay for protection of IP.* If the Reviewing Party believes that delay is needed in order to seek patent or similar protection for any of the Reviewing Party’s Background IP or any Foreground IP, the Reviewing Party may by giving written notice to the Publishing Party require the Publishing Party to delay the proposed publication for a maximum of ninety (90) days or other such time as both Parties may agree, or until any affected IP is protected, whichever is the sooner.
	3. *Removal of Confidential Information.* All Non-Severable Improvements shall be treated as Confidential Information belonging to the owning Party. The Reviewing Party may by giving written notice to the Publishing Party require the removal of any of the Reviewing Party’s Confidential Information from the publication.
	4. *Assumed permission.* If the Publishing Party does not receive a written objection from the Reviewing Party within 30 days of submission of notification of publication then permission to publish shall be deemed to have been given.

## Notification to Irish Government-related Bodies

* 1. *Reporting obligations.* The Industry Party acknowledges that as a publicly funded organisation, the RPO may be obliged to report on its activities, including those relating to research to Government-related Bodies. In particular the RPO is required to report under the terms and conditions of the Grant and related funding to Government-related Bodies.
	2. *Provision of information.* The Industry Party hereby consents to information relating to the Project being reported to Government-related Bodies providing that any such information shall be kept to the minimum required and shall, except for the name of the Industry Party, the amount of the Industry Contribution, and a non-confidential project title, be marked “confidential” to the extent it comprises Confidential Information.
	3. *Reporting under the Grant.* In respect of the Grant, the Industry Party hereby consents to the information listed in Schedule 4 relating to the Project being reported to the State Research Funding Organisation.

## Warranties and Undertakings

* 1. *No implied warranties, etc.* Each Party acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.
	2. *Entitlement to enter the contract.* Each Party warrants to the other that it has full power and authority under its constitution and has taken all necessary actions and obtained all authorisations, licences, consents and approvals, to allow it to enter into this Agreement.
	3. *Performance of the Project.* Each Party shall carry out the research and tasks which it is specified to perform in the project plan set out in Schedule 1, and provide the human resources, materials, facilities and equipment that are designated to be provided by in the project plan, in each case in a timely manner, in accordance with good accepted research practice and all applicable laws, and with due regard for the health and safety of those involved in the Project.
	4. *Use of results or outcome.* Each Party shall be responsible for the use to which it puts any technology, product, process, method, discovery, software, information, material or data developed during the course of or otherwise arising from the Project.
	5. *No other warranties.* Each Party acknowledges that this Agreement provides for the performance of research and that specific results cannot be guaranteed. Neither Party warrants or undertakes that any result or outcome, whether stated in this Agreement or not, shall be achieved, be achievable or be attained at all or by a given Completion Date or any other date, nor does either Party give any warranty that the content or use of any results, Intellectual Property, reports, information or other materials provided in connection with this Agreement will not constitute or result in any infringement of third-party rights.

## Liability and insurance

* 1. *Liability of the Parties.*
		1. To the extent that either Party has any liability to the other Party in contract, tort (including negligence), or otherwise under or in connection with this Agreement, including any liability for breach of warranty, that Party’s liability shall be limited in accordance with the following provisions of this Clause 9.1.
		2. Except as provided in Clauses 9.1(c), 9.1(d) and 9.1(f), the aggregate liability of each Party to the other Party shall be limited to a sum equal to the total Industry Contribution to the Project under this Agreement.
		3. The aggregate liability of each Party to the other Party in the case of breach of confidentiality, wilful default or negligence (not leading to death or personal injury) shall be limited to a sum equal to three (3) times the total Industry Contribution to the Project under this Agreement.
		4. The aggregate liability of the Industry Party to the RPO in respect of any breach of any terms of the Grant to the extent that such breach arises out of or in connection with the Industry Party’s breach of this Agreement or negligence shall be limited to a sum equal to the Total Project Budget (and the Parties acknowledge that losses incurred by the RPO under the Grant as a result of the Industry Party’s breach of this Agreement or negligence shall constitute a direct loss arising out of or in connection with the Industry Party’s breach of this Agreement or negligence).
		5. In no circumstances shall either Party be liable for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the other Party or its Affiliates that is (i) of an indirect, special or consequential nature; or (ii) any loss of profits, revenue, business opportunity or goodwill.
		6. Nothing in this Agreement excludes or limits any Party’s liability for death or personal injury caused by that Party’s negligence, for fraud or fraudulent misrepresentation or for any other liability to the extent it cannot be excluded or limited under applicable law.
	2. *Insurance.* Each Party shall effect and maintain in force all necessary insurance coverage for the performance of its respective obligations under this Agreement, including as a minimum:
		1. Employer’s liability insurance for any one claim in the amount of €13,000,000; and
		2. Public liability insurance for any one claim in the amount of €6,500,000; and
		3. If the Party is providing relevant professional advice under the Project, Professional indemnity insurance in the amount of [•].

## Termination

* 1. *Early termination.* Without prejudice to any other rights or remedies, a Party may terminate this Agreement, at any time, on written notice to the Notice Party:
		1. if the Notice Party is in material breach of its obligations under this Agreement and, where the breach is capable of remedy within thirty (30) days, the Notice Party has not remedied the breach within thirty (30) days of receiving written notice which specifies the breach and requires the breach to be remedied; or
		2. if: (i) the Notice Party becomes insolvent or unable to pay its debts as and when they become due; (ii) an order is made or a resolution is passed for the winding up of the Notice Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction); (iii) a liquidator, examiner, receiver, receiver manager, or trustee is appointed in respect of the whole or any part of the Notice Party’s assets or business; (iv) the Notice Party makes any composition with its creditors; (v) the Notice Party ceases to continue its business; or (vi) as a result of debt and/or maladministration the Notice Party takes or suffers any similar or analogous action.
	2. *Consequences of termination.* On termination of this Agreement for any reason except for material breach by the RPO, the Industry Party shall pay to the RPO:
		1. any payment which was due to the RPO prior to the date of termination but which was not paid prior to termination; and
		2. a proportion of the next payment (if any) falling due after the date of termination reflecting the RPO work prior to the date of termination and any non-cancellable commitments entered into by the RPO [including a proportionate contribution to any redundancy costs that the RPO may incur as a direct result of the termination this Agreement with respect to personnel employed for the purposes of the Project and funded from the Industry Contribution].
	3. *Survival of obligations.* On termination or expiration of this Agreement for any reason, all rights and duties of the Parties with regard to each other will cease except for rights and remedies which may have accrued prior to termination or expiration and any rights and/or obligations which expressly or by implication are intended to commence, survive or continue in effect on or after termination or expiration. Without prejudice to the generality of this clause, the termination or expiration of this Agreement will not affect Clauses 4, 5, 6, 7, 9, 11 and, to the extent applicable, 12 which shall survive the expiration and/or termination of this Agreement.

## Dispute Resolution

* 1. *Internal escalation.* The Parties shall make every reasonable effort to resolve all issues fairly by negotiation.All disputes which arise between the Parties in connection with this Agreement shall be discussed initially between the project managers for the Project. If the dispute remains it shall be referred to [•] in the case of the RPO, and to [•] in the case of the Industry Party in an attempt to resolve the issue in good faith.
	2. *Mediation.* In the event that the dispute has not been settled within sixty (60) days, it shall be submitted for mediation by a mediator or other appropriate independent third party expert agreed by the Parties or, in default of agreement, appointed by the Centre for Dispute Resolution in Dublin. The cost of any such mediator or expert shall be borne equally by the Parties.
	3. *Injunctive relief*. For the avoidance of doubt, however, nothing in this Clause 11 shall prevent or delay a Party from applying to a court of competent jurisdiction for the purposes of seeking injunctive relief provided that there is no delay in the prosecution of that application.

## General

* 1. *Force majeure*.
		1. Neither Party shall have any liability or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement (except payment obligations) that result from any Event of Force Majeure. The Party affected by an Event of Force Majeure shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
		2. If a Party is prevented from performing a material obligation under this Agreement by any Event of Force Majeure for a continuous period of 90 days or more, then the other Party shall be entitled to terminate this Agreement with immediate effect by giving notice in writing. Neither Party shall be liable to the other for such termination.
	2. *Amendments.* This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.
	3. *Independent contractors.* The relationship of the RPO to the Industry Party shall be that of independent contractor. This Agreement is not intended to, and does not, create any contract of employment or other legal relationship between the Parties.
	4. *Sub-contracting.* The RPO may not sub-contract any part of the Project except with the written authorisation of the Industry Party. Where such authorisation is given the RPO shall be responsible for the work of any sub-contractor and for such sub-contractor's compliance with the provisions of this Agreement.
	5. *Assignment.* Neither Party may assign, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement except to its Affiliates without the prior written agreement of the other Party.
	6. *Standard form documents*. The Parties recognise that printed form purchase orders, invoices and other commonly used form documents relating to the performance of any obligations under this Agreement may contain terms which conflict with one or more terms of this Agreement. In case of any such conflict, the relevant terms of this Agreement shall prevail.
	7. *Entire agreement.* This Agreement, including its Schedules, sets out the entire agreement between the Parties relating to its subject matter and supersedes all prior oral or written agreements, arrangements or understandings between them relating to such subject matter.
	8. *Notices.* All notices given by either Party to the other pursuant to this Agreement shall be in writing and may be delivered by pre-paid post, registered courier or by hand to:

|  |  |  |
| --- | --- | --- |
|  | Industry Party Contact: | RPO Contact: |
| Name | [●] | [●] |
| Title | [●] | [●] |
| Address | [●] | [●] |

Any such notice, if so given, shall be deemed to have been served:

* + 1. if sent by hand, when delivered;
		2. if sent by post or courier, one business day after posting.
	1. *Further action.* Each Party agrees to execute, acknowledge and deliver such further instruments, and do all further similar acts, as may be necessary or appropriate to carry out the purposes and intent of this Agreement.
	2. *Severability*. If the whole or any part of a provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that shall not affect the legality, validity or enforceability under the law of that jurisdiction of the remainder of the provision in question or any other provision of this Agreement and the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.
	3. *Costs*. Each Party shall pay its own costs in connection with or incidental to the preparation, negotiation and execution of this Agreement.
	4. *Export and Import Control.*
		1. Any Party making available Restricted Materials for use in connection with the Project shall inform the other Party if Export Control Rules apply to the other Party's use of the Restricted Materials.
		2. Subject to the foregoing, each Party shall adhere to, and reasonably assist each other with adhering to, Export Control Rules and shall not export, re-export, resell, transfer, or disclose, directly or indirectly, any Restricted Materials to any proscribed person, entity, or country, or foreign national thereof, unless properly authorised in accordance with Export Control Rules.
		3. Any Party exporting Restricted Materials shall be solely responsible for obtaining any applicable licences and authorisations.
	5. *Counterparts* *and Signatures.* This Agreement may be executed in counterparts all of which taken together shall constitute one single agreement between the Parties. Transmission of an executed counterpart of this Agreement by fax or e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each Party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.
	6. *Announcements.* Neither Party shall make any press or other public announcement concerning any aspect of this Agreement, or make any use of the name of the other Party in connection with or in consequence of this Agreement, without the prior written consent of the other Party.
	7. *Law and jurisdiction.* This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of Ireland and each Party agrees to submit to the exclusive jurisdiction of the courts of Ireland.

**Agreed by the parties through their authorised signatories:**

|  |  |
| --- | --- |
| **SIGNED** For and on behalf of | **SIGNED** For and on behalf of |
| *[Insert full legal name of the RPO]* | *[Insert full legal name of the Industry Party]* |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signed | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signed |
|  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name |
|  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date |
|  |  |

**We/I not being a party to this Agreement and without intention to create legal relations acknowledge the terms of this Agreement.**

|  |  |
| --- | --- |
| *RPO Principal Investigator* |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signed |  |
|  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name |  |
|  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date |  |

# Schedule 1

**Project Plan**

|  |  |
| --- | --- |
| **Work scope** | *Describe the research to be undertaken and key roles and obligations for each participant* |
| **Goals** | *The main aims of the Project* |
| **Commencement Date** |  |
| **Completion Date** |  |
| **Timetable** | *Provide an estimated timetable of activities.* |
| *Milestones:* |
| **Staff** | *List who will work on the Project and who employs them, and where they will work. State if any elements of the research be subcontracted to third parties. Name the project managers for each of the parties.* |
| *Are suitable contractual arrangements in place with personnel? Y/N?**If not, is there a suitable recruitment plan? Y/N?* |
| **Facilities** | *List the premises, laboratory, specialist equipment and consumables that will be needed for the Project and who will supply these and who will own them.* *Who will insure the equipment? Will any equipment be loaned and, if so, who will insure it?* |
| **Reporting requirements** | *Describe how and how often progress will be reported amongst the parties and to research funders (as applicable)* |
| **Project management** | *Describe the project management arrangements for the Project. Who is the primary point of contact for each organisation? Will there be a steering committee? If so, what role will it have, how often will it meet?* |
| **Dissemination**  | *Describe how the results of the research will be disseminated and describe any restrictions to be imposed* |
| **Changes** | *Are any alterations to the Project possible, and if so what steps are needed to make these changes (including what consultation with the funder will be needed)* |

# Schedule 2

**Budget and Payment Schedule**

**Total Budget**

|  |  |  |  |
| --- | --- | --- | --- |
| ***State Research Funding Organisation Contribution***  | **Year 1** | **Year 2** | **Total** |
| **Direct Contribution**  |  |  |  |
| **Overheads @ [●]%** |  |  |  |
| **Total Cash Contribution** |  |  |  |
|  |  |  |  |
| ***Industry Party Contribution*** | **Year 1** | **Year 2** | **Total** |
| **Direct Contribution**  |  |  |  |
| **Overheads @ [●]%** |  |  |  |
| **VAT (if applicable)** |  |  |  |
| **Total Industry Party Cash Contribution** |  |  |  |
| **Type of In-kind Contribution**  |  |  |  |
| * **Personnel**
 |  |  |  |
| * **Materials**
 |  |  |  |
| * **Equipment**
 |  |  |  |
| * **[●]**
 |  |  |  |
| **Total Industry Party In-kind Contributions** |  |  |  |
| **Total Industry Contribution** |  |  |  |
|  |  |  |  |
| **Total Project Cash Contribution**  |  |  |  |
| **Total Project In-kind Contributions** |  |  |  |
| **Total Project Budget**  |  |  |  |

**Payment Schedule**

|  |  |  |
| --- | --- | --- |
| **Payment schedule****(exclusive of VAT)** | **Date due** | **Amount** |
| [●] | € [●] |
| [●] | € [●] |
| [●] | € [●] |
| **Total fees** | **€ [●]** |
| **RPO’s contact details for invoices** | [●] |
| **Industry Party’s contact details for invoices** | [●] |
| **Payment Terms** | [30] days net. Payment shall be [by way of bank transfer.] |
| **Interest on Late Payment** | Interest shall be automatically applied if payment has not been received within [forty five (45)] days of receipt of a valid invoice. Interest shall be calculated on a daily basis using an interest rate equal to the European Central Bank main refinancing rate (as at 1 January and 1 July in each year) plus [8] percentage points. |
| **Payment details for RPO** | **Bank account name:** [●]**Bank account number:** [●]**Bank sort code:** [●]**Reference:** [●] |
| **VAT** | Where the Discretionary NERF clause is included in the access rights and/or the Industry Party receives a right to take assignment of Industry Non-Severable Improvements, the total Industry Contribution may become subject to VAT at the prevailing rate.In any other case, the research activities carried out by the RPO under this contract will normally not be a taxable supply of services because they involve publicly funded speculative research, and there is no automatic benefit conferred on the Industry Party and VAT will not normally be chargeable on the Industry Contribution.  |
| **[Industry VAT Number** | [●]] |
| **[RPO VAT Number** | [●]] |

# Schedule 3

**Register of Background IP**

**RPO Background IP**

|  |  |  |
| --- | --- | --- |
| **Describe Background** | **List any relevant restrictions and encumbrances associated with the Background** | **Is this “Significant Background”?** |
| [●] | [●] | Yes / No |
| [●] | [●] | Yes / No |

**Industry Party Background IP**

|  |  |  |
| --- | --- | --- |
| **Describe Background** | **List any relevant restrictions and encumbrances associated with the Background** | **Is this “Significant Background”?** |
| [●] | [●] | Yes / No |
| [●] | [●] | Yes / No |

# Schedule 4

**Provisions of the Grant which are relevant to the Industry Party**

**Reporting**

The Industry Party agrees that the RPO will provide the following information to Government-related Bodies according to the reporting schedule described. Unless otherwise specified, all such information will be marked “confidential”.

|  |  |  |
| --- | --- | --- |
| **Information to be provided** | **Government-related Body** | **Date of reporting** |
| [●] | [●] |  |
| [●] | [●] |  |

**Auditing**

**Acknowledgement during publication**

**Termination**

**[Other]**

# Schedule 5

**Indicative Term Sheet for the Licence to be negotiated under the Option**

These outline terms for the licence are based on the Model Non-Binding Term Sheet for Licence Agreements, which is available on the KTI website. See the Practical Guide to Licence Agreements for more background information and a full term sheet.

A range of different types of licence may be available; for more information on which is appropriate in which situation see the Decision tree and text in the associated Practical Guide:

* Exclusive licence which may be licence restricted by field and/or by territory;
* Non-exclusive royalty-free (NERF) licence which may be restricted by field and/or territory;
* Non-exclusive cost-bearing licence which may be restricted by field and/or territory

The Parties intend that the licence agreement will contain terms based on the following principles:

|  |  |
| --- | --- |
| **Licence grant:** | The RPO will grant the Industry Party [an exclusive] *OR* [a non-exclusive] licence to use the IP to develop, manufacture, use, and sell or otherwise supply Licensed Products (to be defined in the Licence Agreement) only in the Licence Field and in the Licence Territory.  |
| **IP:** | The Foreground IP arising in the Project |
| **Licence Field:** | [*Insert description of the Field*]. |
| **Licence Territory:** | [*Insert description of the Territory*]. |
| **Sub-licensing:** | The Industry Party will have no right to grant sub-licences of its rights under the IP, except with the prior written consent of the RPO. |
| **Payments:** | The Industry Party will pay to the RPO: [*insert description of the various payments to be made, which may include e.g. initial payments and/or milestone payments and/or royalties on Net Sales and Net Receipts, etc. For example:* * An initial payment of €[●] within 30 days of signing the Licence Agreement;
* A royalty of [●]% of Net Sales Value (to be defined in the Licence Agreement); and
* A royalty of [●]% of Net Receipts (to be defined in the Licence Agreement).]

**OR**None [*if a NERF has been agreed*] |
| **Other payment terms:**  | [*Insert here a description of any other main payment terms, e.g. minimum royalties, reimbursement of prior and and/or ongoing IP protection and related enforcement costs, etc.]* |
| **Commercialisation:** | The Industry Party will use Diligent and Reasonable Efforts (to be defined in the licence agreement) to develop and commercially exploit Licensed Products. In addition, the Industry Party will submit annual statements to the RPO outlining (amongst other things) the activities taken and planned to bring Licensed Products to market. |
| **Indemnities** | The Industry Party shall indemnify the RPO against any losses relating to the use, manufacture, distribution, sale or supply of any products or services which incorporate the licensed IP, including claims based on product liability laws. |
| **Start date of the licence** | [●] |
| **Duration of the licence** | [●] |
| **Other:** | [*Insert here any other main commercial terms for the proposed licence agreement*]. |