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

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

and

(2) [*Full legal name of the Licensee*]

MODEL NON-EXCLUSIVE SOFTWARE LICENCE agreement (FEE BEARING, NO ROYALTIES)

**MODEL NON-EXCLUSIVE SOFTWARE LICENCE AGREEMENT (FEE BEARING, NO ROYALTIES)**

**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. **[●] [LIMITED][INC]** (the “**Licensee**”), [a company incorporated in [●] under registration number [●],] whose [principal place of business *or* registered office] is at [●].

**Background:**

1. The RPO has developed the RPO Software.
2. The Licensee wishes to acquire rights to use the RPO Software in the Field and in the Territory, all in accordance with the provisions of this Agreement.

**The Parties agree as follows:**

# Definitions

* 1. *Definitions.* In this Agreement, the following words shall have the following meanings:

|  |  |
| --- | --- |
| **Affiliate** | In relation to a Party, means any person that Controls, is Controlled by, or is under common Control with that Party. |
|  |  |
| **Bribery Event** | A breach by a Party and/or its Affiliates and/or their respective officers, directors, employees and representatives of the Prevention of Corruption Acts 1889 to 2010 and/or any corresponding anti-corruption legislation in the Territory. |
| **Claims** | All demands, claims and liability (whether criminal or civil, in contract, tort (including negligence) or otherwise) for losses, damages, legal costs and other expenses of any nature whatsoever and all costs and expenses (including legal costs) incurred in connection therewith. |
| **Commencement Date** | [●]. |
| **Confidential Information** | 1. The RPO Software; and 2. All other technical or commercial information 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; and        2. in respect of information that is imparted orally, any information that the Disclosing Party or its representatives informed the Receiving Party at the time of disclosure was imparted in confidence; and        3. any copy of any of the foregoing. |
| **Control** | Direct or indirect beneficial ownership of 50% (or, outside a Party’s home territory, such lesser percentage as is the maximum, permitted level of foreign investment) or more of the share capital, stock or other participating interest carrying the right to vote or to distribution of profits of that Party, as the case may be. |
| **Developed Products and Services** | Has the meaning given in Clause 2.1. |
| **Disclosing Party** | Has the meaning given in Clause 3. |
| **Field** | The area of [●]. |
| **Parties** | The RPO and the Licensee, and “**Party**” shall mean either of them. |
| **Principal Investigator** | [●]. |
| **Receiving Party** | Has the meaning given in Clause 3. |
| **RPO Software** | The software described in Schedule 1, together with any documentation described in Schedule 1 and any other information the RPO may provide to the Licensee in relation to such software and documentation. |
| **Territory** | [●]. |

# Grant of rights

* 1. *Licence.* The RPO hereby grants to the Licensee, subject to the provisions of this Agreement, a non-transferable and non-exclusive licence to use the RPO Software solely to develop, sell, and supply products and services (together, the “**Developed Products and Services**”) in the Field and in the Territory only. The Licensee shall not use the RPO Software for any purpose except as expressly licensed hereby and in accordance with the provisions of this Agreement.
  2. *Sub-licensing*. The Licensee shall not be entitled to grant sub-licences of its rights under this Agreement, except with the prior written consent of the RPO, which consent shall not be unreasonably withheld.
  3. *Reservation of rights.*
     1. Except for the licence expressly granted by Clause 2.1, the RPO reserves all its rights. Without limiting the scope of the preceding sentence, the RPO grants no rights to any intellectual property other than any intellectual property rights that subsist in the RPO Software and reserves all rights outside the Field.
     2. As the licence granted in Clause 2.1 is non-exclusive, the Licensee acknowledges and agrees that this Agreement places no restriction on the RPO’s activities with respect to the RPO Software. Without limiting the scope of the preceding sentence, the RPO reserves for itself and its Affiliates the irrevocable, worldwide, and royalty-free right to use the whole or any part of the RPO Software for any and all purposes, whether commercial or non-commercial and whether in or out of the Field. For the avoidance of doubt, and without limitation, such purposes shall include the purposes of research, teaching and publication.
  4. *Supply of the RPO Software*.
     1. Within fourteen (14) days of the Commencement Date, the RPO shall provide the Licensee with a single copy of the RPO Software. The Licensee acknowledges and agrees that no other documentation, manuals or other written information shall be provided to it by the RPO other than the RPO Software.

* + 1. Except as expressly permitted by this Agreement, the Licensee shall not modify, adapt, disassemble, reverse engineer, decompile, translate, or otherwise attempt to discover the source code of any of the RPO Software solely made available to the Licensee in object code form or permit any of these things to happen, except as expressly allowed by applicable, mandatory law governing the rights of software licensees.
    2. The RPO Software is provided ‘as is’ and, without prejudice to the generality of Clause 6, the RPO shall not have any obligations to upgrade, bug-fix, provide support or maintenance services, or provide any information, assistance or consultancy in relation to the RPO Software.
    3. The Parties may enter into a further written agreement under which the RPO (through the Principal Investigator) would provide consultancy services to the Licensee in relation to the further development or support and maintenance of the RPO Software. Any such agreement: (i) would be on the terms of the RPO’s standard consultancy agreement, or such other terms as the Parties may agree in writing; and (ii) must be signed by authorised representatives of each Party.
  1. *Quality.* The Licensee shall ensure that all Developed Products and Services are of satisfactory quality and comply with all applicable laws and regulations in each part of the Territory.

# Confidentiality

* 1. *Confidentiality obligations.* Each Party (the “**Receiving Party**”) undertakes from the Commencement Date:
     1. to maintain as secret and confidential all Confidential Information obtained directly or indirectly from the other Party (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 employees and contractors 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 officers, directors, employees and professional advisors, 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 3.1 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, employees, 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 legal obligations, such as under a *bona fide* freedom of information request, it may do so, provided that, before making such a disclosure the Receiving Party shall, unless the circumstances prohibit:
     1. inform the Disclosing Party of the proposed disclosure as soon as possible, in any event, no later than five (5) working days after becoming aware of the proposed disclosure; and
     2. permit the Disclosing Party to make representations (written or otherwise) in respect of the disclosure and/or confidential treatment of the Confidential Information.

# Payments

* 1. *Initial payment*. Within thirty (30) days of the Commencement Date, the Licensee shall pay to the RPO the non-refundable, non-deductible lump-sum of [●] Euro (€[●]).
  2. *Annual licence fees.* On each anniversary of the Commencement Date (or such other date(s) as may be agreed to by the Parties in writing), the Licensee shall pay to the RPO the annual licence fee of [●] Euro (€[●]).
  3. *Payment terms.* All sums due under this Agreement:
     1. are exclusive of Value Added Tax which where applicable will be paid by the Licensee to the RPO in addition;
     2. shall be paid in Euro in cash by transferring an amount in aggregate to the following account number [●], sort code [●], account name [●], held with [●] Bank plc, [address]; and
     3. shall be made by the due date, failing which the RPO may charge interest on any outstanding amount on a daily basis at an annual rate equivalent to [●] per cent ([●]%) above the [●] Bank plc base lending rate then in force in [Dublin].

# Intellectual property

* 1. *Infringement of the RPO Software.*
     1. Each Party shall inform the other Party promptly if it becomes aware of any infringement or potential infringement of any intellectual property rights that subsist in the RPO Softwarein the Field, and the Parties shall consult with each other to decide the best way to respond to such infringement.
     2. If the alleged infringement is both within and outside the Field, the Parties shall also co-operate with the RPO’s other licensees (if any) in relation to any such action.
     3. Notwithstanding any other provision, the RPO shall have the exclusive right to determine whether or not any litigation shall be instituted or other action taken in connection with any infringement or potential infringement of any intellectual property rights that subsist in the RPO Software. The Licensee shall not institute any litigation or other action in relation to any such infringement or potential infringement except with the RPO’s prior written agreement.
  2. *Infringement of third party rights.*
     1. If any warning letter or other notice of infringement is received by a Party, or legal suit or other action is brought against a Party, alleging infringement of third party rights in the manufacture, use or sale of any Developed Products and Services or in the use of the RPO Software, that Party shall promptly provide full details to the other Party, and the Parties shall discuss the best way to respond.
     2. The Licensee shall not make any admissions in relation to such allegations, except with the prior written agreement of the RPO. Unless otherwise agreed in writing by the Parties, the RPO shall have the exclusive right to conduct any proceedings relating to the RPO Software, including any proceedings relating to the alleged infringement of third party rights in the use of the RPO Software.

# Warranties and liability

* 1. *Warranties by RPO*. The RPO warrants and undertakes as follows:
     1. Subject to Clause 6.2(b), it is the proprietor of any copyright that subsists in the RPO Software; and
     2. It has not done, and shall not do nor agree to do during the continuation of this Agreement, any of the following things if to do so would be inconsistent with the exercise by the Licensee of the rights granted to it under this Agreement, namely: assigned, mortgaged, charged, or otherwise transferred any copyright that subsists in the RPO Software in the Field in the Territory or (subject to Clause 8.3(b)) any of its rights or obligations under this Agreement.
  2. *Acknowledgements.* The Licensee acknowledges and agrees that:
     1. the RPO Software is at an early stage of development. Accordingly, specific results cannot be guaranteed and any results, materials, information or other items (together “**Delivered Items**”) provided under this Agreement are provided ’as is’ and without any express or implied warranties, representations or undertakings. As examples, but without limiting the foregoing, the RPO does not give any warranty that Delivered Items are of merchantable or satisfactory quality, are fit for any particular purpose, comply with any sample or description, nor are free from bugs, errors, viruses, or other harmful elements; and
     2. the RPO has not performed any searches or investigations into the existence of any third party rights that may affect the RPO Software.
  3. *No other warranties.*
     1. Each of the Licensee and the RPO 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. Without limiting the scope of Clause 6.3(a), the RPO does not make any representation nor give any warranty or undertaking:
        1. as to the scope, efficacy or usefulness of the RPO Software; or
        2. that the use of the RPO Software, the manufacture, sale or use of the Developed Products and Services or the exercise of any of the rights granted under this Agreement will not infringe any intellectual property or other rights of any other person; or
        3. that the RPO Software and any other information communicated by the RPO to the Licensee under or in connection with this Agreement will produce Developed Products and Services of satisfactory quality or fit for the purpose for which the Licensee intended or that any product will not have any latent or other defects, whether or not discoverable; or
        4. as imposing any obligation on the RPO to bring or prosecute actions or proceedings against third parties for infringement of any intellectual property rights that subsist in the RPO Software.
  4. *Indemnity*. The Licensee shall indemnify the RPO against all third party Claims that may be asserted against or suffered by the RPO and which relate to:
     1. the use by the Licensee of the RPO Software;
     2. the development, manufacture, use, marketing or sale of, or any other dealing in, any of the Developed Products and Services, by the Licensee, or by any other person, including claims based on product liability laws; or
     3. a breach by the Licensee of any laws or regulations in the Territory, including any Bribery Event.
  5. *Conditions for the indemnity.* If the RPO seeks indemnification pursuant to Clause 6.4, the RPO shall provide prompt written notice to the Licensee of the initiation of any action or proceeding that may reasonably lead to a claim for indemnification. Upon receipt of such notice, the Licensee shall have the right to assume the defence and settlement of such action or proceeding, provided that it shall not settle any action or proceeding without the RPO’s prior written consent. The RPO and the Licensee shall co-operate with each other in the defence of such claim.
  6. *Liability of the Parties.*
     1. To the extent that either of the Parties has any liability in contract, tort (including negligence), or otherwise under or in connection with this Agreement, including any liability for breach of warranty, their liability shall be limited in accordance with the following provisions of this Clause 6.6. However, the limitations and exclusions of liability set out in this Clause 6.6 shall not apply to any indemnity against third party Claims given under Clause 6.4.
     2. The aggregate liability of the RPO shall be limited to an amount equal to the total income that the RPO has received from the Licensee during the period of [●] years preceding the date on which the liability arises, or [●], whichever is the higher.
     3. 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 (a) of an indirect, special or consequential nature or (b) any loss of profits, revenue, data, business opportunity or goodwill.
     4. Notwithstanding any other provision, nothing in this Agreement excludes any person’s liability to the extent that it may not be so excluded under applicable law, including any such liability for death or personal injury caused by that person’s negligence, or liability for fraud.
  7. *Insurance.* Without limiting its liabilities under this Agreement, the Licensee shall take out with a reputable insurance company and maintain at all times during the term of this Agreement public, professional and product liability insurance including against all loss of and damage to property (whether real, personal or intellectual) and injury to persons including death arising out of or in connection with this Agreement and the Licensee’s use of the RPO Software and use, sale of or any other dealing in any of the Developed Products and Services. Such insurances may be limited in respect of one claim provided that such limit must be at least six million five hundred thousand Euro (€6,500,000). Product and professional liability insurance shall continue to be maintained by the Licensee for a further six (6) years from the end of the term of this Agreement.

# Duration and Termination

* 1. *Commencement and Termination by Expiry.* This Agreement, and the licence granted hereunder, shall come into effect on the Commencement Date and, unless terminated earlier in accordance with this Clause 7, shall continue in force until the [[tenth (10th)] anniversary of the [Commencement Date] *or* [the [tenth (10th)] anniversary of the first commercial sale of any Developed Products and Services in any Territory]. On such date, this Agreement and the licence granted hereunder shall terminate automatically by expiry.
  2. *Early termination.*
     1. The Licensee may terminate this Agreement at any time on [twelve (12) months’] notice in writing to the RPO.
     2. Either Party may terminate this Agreement at any time by notice in writing to the other Party (the “**Other Party**”), such termination to take effect as specified in the notice:
        1. if the Other Party is in material breach of this Agreement and, in the case of a breach capable of remedy within ninety (90) days, the breach is not remedied within ninety (90) days of the Other Party receiving notice specifying the breach and requiring its remedy; or
        2. if: (A) the Other Party becomes insolvent or unable to pay its debts as and when they become due; (B) an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction); (C) a liquidator, examiner, receiver, receiver manager, or trustee is appointed in respect of the whole or any part of the Other Party’s assets or business; (D) the Other Party makes any composition with its creditors; (E) the Other Party ceases to continue its business; or (F) as a result of debt and/or maladministration the Other Party takes or suffers any similar or analogous action.
     3. The RPO may terminate this Agreement by giving written notice to the Licensee, such termination to take effect forthwith or as otherwise stated in the notice:
        1. if the Licensee fails to pay any amount due under this Agreement by the relevant due date; or
        2. [if there is any change of Control of the Licensee; or]
        3. if a Bribery Event occurs in relation to the Licensee, any of its Affiliates or their respective officers, directors, employees and representatives.
     4. A Party’s right of termination under this Agreement, and the exercise of any such right, shall be without prejudice to any other right or remedy (including any right to claim damages) that such Party may have in the event of a breach of contract or other default by the other Party.
  3. *Consequences of termination.*
     1. Upon termination of this Agreement for any reason otherwise than in accordance with Clause 7.1:
        1. the Licensee shall be entitled to sell, use or otherwise dispose of any unsold or unused stocks of the Developed Products and Services for a period of six (6) months following the date of termination;
        2. subject to paragraph (i) above, the Licensee shall no longer be licensed to use or otherwise exploit in any way, either directly or indirectly, the RPO Software, in so far and for as long as any intellectual property rights that subsist in the RPO Software remain in force;
        3. each Party shall return to the other or, at the other Party’s request, destroy any documents or other materials that are in its possession or under its control and that contain the other Party’s Confidential Information; and
        4. subject as provided in this Clause 7.3, and except in respect of any accrued rights, neither Party shall be under any further obligation to the other.
     2. Upon termination of this Agreement for any reason the provisions of Clauses [3, 6.4, 6.5, 6.6, 6.7, 7.3 and 8] shall remain in force.

# General

* 1. *Force majeure*. 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 that result from circumstances beyond the reasonable control of that Party, including labour disputes involving that Party. The Party affected by such circumstances 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. *Amendment.* This Agreement may only be amended in writing signed by duly authorised representatives of the RPO and the Licensee.
  3. *Assignment.*
     1. Subject to Clause 8.3(b), neither Party shall assign, mortgage, charge or otherwise transfer any rights or obligations under this Agreement, nor any of the RPO Software, without the prior written consent of the other Party.
     2. Either Party may assign all its rights and obligations under this Agreement together with its rights in the RPO Software to any person to which it transfers all or substantially all of its assets or business [in the Field], provided that the assignee undertakes to the other Party to be bound by and perform the obligations of the assignor under this Agreement. However a Party shall not have such a right to assign this Agreement if it is insolvent or any other circumstance described in Clause 7.2(b)(ii) applies to it.
  4. *Waiver.* No failure or delay on the part of either Party to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy.
  5. *Invalid clauses.* If any provision or part of this Agreement is held to be invalid, amendments to this Agreement may be made by the addition or deletion of wording as appropriate to remove the invalid part or provision but otherwise retain the provision and the other provisions of this Agreement to the maximum extent permissible under applicable law.
  6. *No agency.* Neither Party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other’s behalf.
  7. *Interpretation.* In this Agreement:
     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 the masculine include the feminine and vice versa;
     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; and
     5. where the word “including” is used it shall be understood as meaning “including without limitation”.
  8. *Notices.*
     1. Any notice to be given under this Agreement shall be in writing and shall be sent by post, or by fax (confirmed by post) to the address of the relevant Party set out at the head of this Agreement, or to the relevant fax number set out below, or such other address or fax number as that Party may from time to time notify to the other Party in accordance with this Clause 8.8. The fax numbers of the Parties are as follows: the RPO – [●]; the Licensee – [●].
     2. Notices sent as above shall be deemed to have been received three (3) working days after the day of posting, or on the next working day after transmission (in the case of fax messages, but only if a transmission report is generated by the sender’s fax machine recording a message from the recipient’s fax machine, confirming that the fax was sent to the number indicated above and confirming that all pages were successfully transmitted).

* 1. *Law and jurisdiction.* 
     1. This Agreement shall be governed by and construed in accordance with the laws of the Republic of Ireland and each Party agrees to submit to the exclusive jurisdiction of the courts of the Republic of Ireland.
     2. Notwithstanding Clause 8.9(a), before commencing any litigation, each Party shall consider in good faith whether it would be reasonable in the circumstances for the Parties to agree to pursue any alternative dispute resolution processes. Such alternative processes may include internal escalation procedures and/or mediation in accordance with the WIPO mediation rules. For the avoidance of doubt, however, nothing in this Agreement shall prevent or delay a Party from seeking an interim injunction.
  2. *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.
  3. *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.
  4. *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. Subject to Clause 6.6(d), the Parties acknowledge that they are not relying on any representation, agreement, term or condition which is not set out in this Agreement.
  5. *Export Control Regulations.*
     1. "**Export Control Regulations**" mean any United Nations trade sanctions, Irish, or EU legislation or regulation, from time to time in force, which impose arms embargoes or control the export of goods, technology or software, including weapons of mass destruction and arms, military, paramilitary and security equipment and dual-use items (items designed for civil use but which can be used for military purposes) and certain drugs and chemicals.
     2. The Licensee shall ensure that, in exercising its rights pursuant to this Agreement including in using the RPO Software and in selling Developed Products and Services, it shall not and nor shall its or its Affiliates employees or sub-contractors breach or compromise, directly or indirectly, compliance with any Export Control Regulations.

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

|  |  |
| --- | --- |
| For and on behalf of  *[Full legal name of the RPO]*  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signed  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Print name  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date | For and on behalf of  *[Full legal name of the Licensee]*  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signed  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Print name  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date |

**Schedule 1**

*The RPO Software*

[*Insert a description of the software to be licensed, including: specifying whether object or source code will be made available; whether any particular version of the software will be made available; and a description of any documentation, other information and resources (such as a CD-ROM) to be made available.*]