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

1. [Full legal name of the RPO]

and

(2) [Full legal name of the Company]

**MODEL option agreement**

**MODEL OPTION AGREEMENT**

**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 “**Company**”), [a company incorporated in [●] under registration number [●],] whose [principal place of business *or* registered address] is at [●].

**Background:**

1. The RPO has developed certain technology and owns certain intellectual property rights relating to [●], including the Patents and the Know-how; and
2. The Company wishes to acquire an option to obtain rights under the Patents and to use the Know-how for the purposes set out in this Agreement and the RPO is willing to grant the Company such an option in accordance with the provisions of this Agreement.

**The Parties agree as follows:**

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

|  |  |
| --- | --- |
| **Commencement Date** | [●]. |
| **Confidential Information** | 1. All Patents and Know-how; and 2. All other technical or commercial information that: 3. 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 4. 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 5. any copy of any of the foregoing. |
| **Field** | [●]. |
| **Know-how** | Technical information in the Field developed by the RPO and relating directly to the inventions claimed in the Patents, as described in the attached Schedule 1 Part B. |
| **Licence Rights** | The licence rights described in Schedule 2. |
| **Option** | The option described in Clause 2.1. |
| **Option Fee** | The sum of €[●] ([●] Euro). |
| **Option Period** | The period of [90] days from the Commencement Date, subject to any earlier termination of the Option under Clause 6. |
| **Patents** | Any and all of the patents and patent applications referred to in Schedule 1 Part A, including any continuations, continuations in part, extensions, reissues, divisions, and any patents, [supplementary protection certificates] and similar rights that derive priority from the foregoing. |
| **Territory** | [●] . |

1. **Option**
   1. In consideration of the payment of the Option Fee by the Company to the RPO, the RPO hereby grants to the Company an [exclusive] option, with effect from the Commencement Date and during the Option Period and subject to the provisions of this Agreement, to negotiate a separate, written licence agreement to use the Patents and the Know-how in the Field and in the Territory.
   2. During the Option Period, the RPO and the Company shall negotiate in good faith the terms of a separate, written licence agreement between them under which the Company would be granted the Licence Rights. [Any such licence agreement would include, without limitation, terms based on the provisions of Schedule 3.] [Any such licence agreement will be upon the terms recorded in Schedule 3.] Upon agreement of the terms of the licence agreement during the Option Period, the Parties shall forthwith execute a licence agreement between them on such terms.
   3. If the Parties are unable to agree the terms of a separate, written licence agreement during the Option Period, despite negotiating in good faith, the Option will lapse and this Agreement shall terminate by expiry.
   4. During the Option Period, the RPO reserves for itself and its collaborators the [exclusive,] irrevocable, worldwide, royalty-free right to use the Patents and Know-how for the purposes of research that is not directed to the development of commercial products and services, publication and teaching.
2. **Payments**
   1. In consideration of the Option, the Company shall pay to the RPO the Option Fee (plus VAT and any other taxes or duties that are applicable) within [30] days of the Commencement Date.
   2. All amounts stated or referred to in this Agreement are exclusive of VAT and any other taxes or duties that are applicable. These will be charged by the RPO to the Company and are payable by the Company in addition, if applicable and at the appropriate rate.
3. **No warranty**
   1. The Company acknowledges and agrees that:
4. the inventions claimed in the Patents, and the Know-how, are at an early stage of development. Accordingly, specific results cannot be guaranteed and any results, materials, information and other items, including the Patents and the Know-how, (together, the “**Delivered Items**”) provided under this Agreement are provided to the Company ‘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 the Delivered Items are of merchantable or satisfactory quality, are fit for any particular purpose, comply with any sample or description, nor are viable, uncontaminated, safe or non-toxic, accurate, up to date or complete; and
5. the RPO has not performed any searches or investigations into the existence of any third party rights that may affect any of the Patents or Know-how.
6. **Confidentiality obligations** 
   1. Each Party (the “**Receiving Party**”) undertakes from the Commencement Date:
7. 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;
8. to use such Confidential Information only for the purposes of this Agreement;
9. to disclose such Confidential Information only to those of its employees to whom and to the extent that such disclosure is reasonably necessary for the purposes of this Agreement; and
10. to ensure that all those to whom disclosure of or access to such Confidential Information has been given, including its employees, 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.
    1. The provisions of Clause 5.1 shall not apply to Confidential Information which the Receiving Party can demonstrate by reasonable, written evidence:
11. 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
12. 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
13. 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
14. is or becomes generally available to the public through no act or default of the Receiving Party or its employees.
    1. 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:
15. inform the Disclosing Party of the proposed disclosure as soon as possible, in any event, no later than 5 working days after becoming aware of the proposed disclosure; and
16. permit the Disclosing Party to make representations (written or otherwise) in respect of the disclosure and/or confidential treatment of the Confidential Information.
17. **Termination**
    1. This Agreement shall come into effect on the Commencement Date and, subject to any earlier termination in accordance with this Clause 6, shall continue in force until the expiry of the Option Period. Upon expiry of the Option Period, this Agreement, and the Option, shall terminate by expiry.
    2. The Company may terminate this Agreement at any time on giving no less than 60 days’ notice in writing to the RPO.
    3. 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:
18. if the Other Party is in material breach of this Agreement; or
19. 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.
    1. The RPO may terminate this Agreement by giving written notice to the Company, such termination to take effect forthwith or as otherwise stated in the notice:
20. if the Company fails to pay any amount payable under this Agreement by the due date; or
21. if the RPO has reasonable grounds to believe that the Company or any of its employees or representatives are in breach of any applicable anti-corruption legislation.
    1. 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.
    2. Upon termination of this Agreement for any reason, including without limitation upon termination by expiry under Clause 6.1:
22. the Company shall immediately cease to make any further use of the Patents, Know-how and any Confidential Information provided by the RPO under this Agreement and shall, at the RPO’s option return or destroy any documents or other materials under its possession or control recording any of the Patents, Know-how or Confidential Information;
23. the Option shall lapse, and in such circumstances, the RPO shall be free to exploit the Patents and the Know-how without restriction or further obligation to the Company; and
24. neither Party shall be under any further obligation to the other save that obligations under Clauses 5, 6.6 and 7 of this Agreement shall remain in force.
25. **General**
    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 that result from circumstances beyond the reasonable control of that Party, including without limitation 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. This Agreement may only be amended in writing signed by duly authorised representatives of the RPO and the Company.
    3. Subject to Clause 7.4, neither Party shall assign, mortgage, charge or otherwise transfer any rights or obligations under this Agreement, nor any of the Patents or rights under the Patents, without the prior written consent of the other Party.
    4. Either Party may assign all its rights and obligations under this Agreement together with its rights in the Patents to any company or other organisation 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 any of the circumstances described in Clause 6.3(b) apply to it.
    5. 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.
    6. Any notice to be given under this Agreement shall be in writing and shall be sent by post or by fax 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 7.6. The fax numbers of the Parties are as follows:
26. RPO – [●]; and
27. Company – [●].
    1. Notices sent as above shall be deemed to have been received three 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).
    2. 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. Notwithstanding the preceding sentence, 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 dispute resolution 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.
    3. 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.
    4. 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.
    5. 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. The Parties acknowledge that they are not relying on any representation, agreement, term or condition which is not set out in this Agreement.

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

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

**Schedule 1**

**Part A**

**Patents**

[Insert details of the patents and/or patent applications]

**Part B**

**Know-how**

[Insert a description of the know-how including reference to any documents in which the Know-how is recorded]

**Schedule 2**

**Licence Rights**

[Insert key points to be incorporated in licence agreement such as:

* Intended exclusivity.
* Duration.
* Field.
* Territory.
* Permitted use (e.g. manufacture, develop, sell or supply).
* Ability to grant sub-licences.
* Warranties or indemnities to be offered.]

**Schedule 3**

[Insert details of any pre-agreed term sheet (including commercial details) or insert a copy of the finalised licence agreement that will be signed if the evaluation period is satisfactory]