STRICTLY PRIVATE AND CONFIDENTIAL

NOT TO BE DISCLOSED OR CIRCULATED TO THIRD PARTIES

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

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

and

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

and

1. [*Full legal names of each of the other parties*]

**MODEL NON-BINDING TERM SHEET FOR A SUBSCRIPTION AND SHAREHOLDERS’** **agreement in respect of [●] an early stage spin-out company**

NON-BINDING TERM SHEET FOR A SUBSCRIPTION AND SHAREHOLDERS’ AGREEMENT
 IN RESPECT OF [●], AN EARLY STAGE SPIN-OUT COMPANY

**This Non-Binding Term Sheet** dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20[●] is between:

1. [●] Limited (the “**Company**”), a private company limited by shares registered in Ireland under Part 2 of the Companies Act 2014 under company registration number [●], whose registered address is at [●]; and
2. [●] (the “**RPO**”), an academic institution [incorporated *or* established] under [statute *or* charter in Ireland], whose [principal address *or* registered office] is at [•]; and
3. [●] an individual, whose residential address is at [•]; and
4. [●] an individual, whose residential address is at [•].

The Company, the RPO, and [●] together shall be referred to as the “**Parties**”, and individually shall be referred to as a “**Party**”.

1. Purpose

The Company is a spin-out company of the RPO that has been incorporated to develop and commercialise certain intellectual property generated by [●]. The RPO and [●] wish to regulate their affairs as shareholders in the Company and, accordingly, the Parties intend to enter into a subscription and shareholders’ agreement (the “**Shareholders’ Agreement**”). The purpose of this Non-Binding Term Sheet is to summarise the main commercial terms that the Parties intend to include in any such Shareholders’ Agreement.

1. Provisions envisaged for the Shareholders’ Agreement

The Parties intend that the Shareholders’ Agreement would contain terms based on the following principles:

|  |  |
| --- | --- |
| Completion Date | Subject to the Conditions being satisfied or waived by the relevant Parties, the Shareholders’ Agreement would come into effect on [●]. |
| Conditions | Completion of the Shareholders’ Agreement would be conditional upon the conditions set out in Schedule 1 being satisfied before the Completion Date.  |
| Shareholding immediately prior to Completion  | The Company would warrant that, immediately prior to the Completion Date, the total issued share capital of the Company would be as set out in Part A of Schedule 2. |

|  |  |
| --- | --- |
| Subscription for shares | On the Completion Date, [●] would subscribe and pay for new shares of €[●] each in the Company in the following amount[s] and for the following subscription price[s]:* [●]: [●] shares for a total subscription price of €[●]; and
* [●]: [●] shares for a total subscription price of €[●]; and
* The RPO: [●] shares for a total subscription price of €[●].

The Parties would take such action as may be necessary to give effect to such subscription[s].  |
| Shareholding immediately following Completion  | The Company would warrant that, immediately following the Completion Date, the total issued share capital of the Company would be as set out in Part B of Schedule 2.  |
| Other warranties | [●] would be required to give the warranties set out in Schedule 3 about the Company as of the Completion Date. |
| No dilution of the RPO | The percentage shareholding in the Company owned by the RPO immediately following the Completion Date would be maintained and protected from any dilution until such time as the Company has received more than €[●] in aggregate by way of subscription for shares in its share capital. If, in order to maintain and protect the RPO’s shareholding, the Company would be required to issue further shares to the RPO, the RPO would not be required to pay more than the nominal value (of €[●] per share) for such shares.  |
| Qualifying Shareholders | Any shareholder who owned at least [●] percent of the total issued share capital of the Company would be classified as a “Qualifying Shareholder” in the Shareholders’ Agreement. None of the matters set out in Schedule 4 would be validly agreed or undertaken without the prior consent of all Qualifying Shareholders. |
| RPO’s right to appoint a director, etc. | For as long as the RPO was a Qualifying Shareholder, the RPO would be entitled to appoint a director of the Company. In addition, and irrespective of whether the RPO had appointed a director, the RPO would be entitled to appoint an observer of the board of directors of the Company. Any director and/or observer appointed by the RPO would be at liberty to make full disclosure of any information relating to the Company to the RPO, its affiliates and their respective officers, employees, other personnel and advisors. The RPO would be responsible for ensuring that appropriate confidentiality arrangements were put in place with any persons who would have access to such information of the Company. |
| The Board | Immediately following the Completion Date, the following individuals would comprise the board of directors of the Company: [●].  |
| The role of the Board | The board would have responsibility for the supervision and management of the Company, subject to the rights of the Qualifying Shareholders.  |
| Remuneration | Unless otherwise agreed (in the manner to be set out in the Shareholders’ Agreement), no director would be remunerated by the Company for their attendance at board meetings or for any other activities the director may perform in his/her capacity as such. |
| Quorum | The quorum for board meetings would be [●] directors. |
| Board meetings | The Company would ensure that board meetings would be convened at least [●] times a year by written notice (specifying at least the date, time and place of the meeting) to be sent to all directors of the Company and any observer appointed by the RPO not later than [●] days before the meeting. The Company would also ensure that every notice would be accompanied by a written agenda specifying the matters to be raised at the meeting, together with copies of all papers to be laid before the meeting.  |
| [The Founders] | [It is envisaged that the Company would enter into a separate service agreement with [each of] [●] in order to set out the arrangements for his/her role as [●] of the Company.] |
| Restrictive covenants | [●] would be required to give assurances to the other Parties that, whilst he/she was a Qualifying Shareholder and for [twelve (12)] months thereafter, he/she would not (in general terms): * compete with the Company;
* “poach” the Company’s staff or customers; or
* negatively interfere with the Company’s business arrangements or negotiations.
 |

1. Areas still to be discussed

The Parties envisage that the Shareholders’ Agreement may also include other terms, which may include, without limitation, [•].

1. Confidentiality

*EITHER:* [Each Party acknowledges that during the negotiation of the Shareholders’ Agreement it may receive Confidential Information from another Party. “**Confidential Information**” shall mean any information which, if in writing, is marked as confidential or which, if not in writing, is otherwise characterised as confidential at the time of disclosure. Each Party agrees that it will:

* 1. use the Confidential Information only for the purpose of negotiating the Shareholders’ Agreement and not for any other purpose; and
	2. keep the Confidential Information confidential and not directly or indirectly disclose it or make it available to any third party.

This obligation shall not apply to information which is or subsequently becomes publicly known through no act or omission of the Party that receives it.]

*OR:* [It is agreed that the confidentiality of the Parties’ confidential information that may be disclosed by one Party to another Party during the negotiation of the Shareholders’ Agreement will be maintained in accordance with the Confidentiality Agreement signed by the Parties on [*insert date*].]

1. Law and status of this Term Sheet

Except for the provisions of Clauses 4, 5 and 6 which the Parties intend to be binding obligations, this Term Sheet is not intended to create, evidence or imply any legal relationship or contract between the Parties. Each Party acknowledges and agrees that (a) each Party may withdraw from the negotiation of the Shareholders’ Agreement at any time without liability, and (b) the negotiations are being conducted on a non-exclusive basis, unless and to the extent otherwise stated in this Term Sheet. To the extent that any legal issue arises in connection with this Term Sheet, it will be governed and construed in accordance with the laws of Ireland.

1. Costs

Each Party shall bear its own legal and other costs in connection with the negotiation and preparation of this Term Sheet and any subsequent agreement.

1. Independent Legal Advice

[•] acknowledges that (a) he/she should consider obtaining independent legal advice on the contents of this Term Sheet and any subsequent agreement, and (b) the other Parties have given [•] the opportunity to take such advice. Accordingly, [•] confirms that he/she has read and fully understood the provisions of this Term Sheet.

**The Parties record their understanding of the above by signing below:**

|  |  |
| --- | --- |
| For and on behalf of | For and on behalf of |
| [*Full legal name of the Company*] | [*Full legal name of the RPO*] |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signed | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signed |
|  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name |
|  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date |
| For and on behalf of | For and on behalf of |
|  |  |
| [*Full legal name of the other Party*] | [*Full legal name of the other Party*] |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signed | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signed |
|  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name |
|  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date |

**Schedule 1**

**Conditions for Completion**

The Shareholders’ Agreement would be conditional upon all of the following conditions being satisfied before the Completion Date:

* The RPO being satisfied with the final form of the following documents: [●];
* [●] passing shareholder resolutions to: [●]; and
* [*Insert any other conditions that would need to be satisfied before the Completion Date and by whom, including any milestones that the Company would need to achieve*].

**Schedule 2**

**Shareholding in the Company**

**Part A: Immediately prior to the Completion Date:**

The total issued share capital of the Company immediately prior to the Completion Date would be:

[●] shares of €[●] each, all of which have been fully paid-up and are beneficially owned by, and are registered in the name[s] of, [●] in the following amount[s]: [●].

[●] paid the following amount[s] to the Company for such shares: [●].

**Part B: Immediately following the Completion Date:**

The total issued share capital of the Company immediately following the Completion Date would be:

[●] shares of €[●] each, all of which have been fully paid-up and are beneficially owned by, and are registered in the name[s] of, [●] in the following amount[s]: [●].

[●] paid the following amount[s] to the Company for such shares: [●].

**Schedule 3**

**Warranties**

The Company:

* is duly incorporated and validly existing, has the power and authority to own assets, and has the capacity to enter into the Shareholders’ Agreement;
* does not have any debts or other liabilities;
* is not involved in any legal proceedings and is not aware of any circumstances that may result in any claim being made against the Company;
* has not entered into any contracts or otherwise begun to trade;
* has ensured that all of its registers and books, and all of its filings with the Company Registration Office, are up-to-date, complete and accurate; and
* has not done anything that may damage the reputation or the good name of the RPO.

**Schedule 4**

**Matters requiring consent by the Qualifying Shareholders**

* + 1. [any alteration to the Company’s constitution;
		2. any change to the issued share or loan capital of the Company, or any grant of any option or other right to subscribe for any share or loan capital of the Company, or any issue of securities convertible into such share or loan capital;
		3. any alteration of any right attached to any share in the Company, or any creation of any new equity interest in the Company;
		4. any resolution or petition for the winding up, administration or examinership of the Company (or any analogous event);
		5. subject to the RPO’s right to appoint a director, the appointment of any person to be a director of the Company, or the remuneration in excess of €[●] or granting of any pension rights to any director of the Company, or the entering into or making of any material change to any contract of employment with any director or senior manager of the Company;
		6. the entering into of any contract of employment or for the provision of services to the Company which cannot be terminated on less than [●] months’ notice, without payment of compensation;
		7. the granting to any person (other than a director of the Company) of authority to act on behalf of the Company;
		8. any acquisition, whether by formation or otherwise, by the Company of any subsidiary, or any disposal or dilution of the Company’s interest in any subsidiary;
		9. any Asset Sale or Share Sale (both terms to be defined in the Shareholders’ Agreement);
		10. any disposal of shares in the capital of the Company amounting to an IPO (to be defined in the Shareholders’ Agreement);
		11. any borrowing by the Company of any sums in excess of €[●] at any time;
		12. any undertaking by the Company in any financial year of any single item or series of items of capital expenditure involving an aggregate liability in excess of €[●];
		13. the making by the Company of any loan, or the giving of any advance or other credit (other than credit given in the normal course of the Company’s business), in excess of €[●] to any person except for the purpose of making deposits with the Company’s bankers;
		14. the giving by Company of any guarantee, bond or indemnity in respect of or to secure the liabilities or obligations of any person;
		15. the creation or issue of any debenture, mortgage, charge or other security over any assets of the Company (except for the purpose of securing sums borrowed by the Company from its bankers in the ordinary and usual course of business);
		16. any acquisition by the Company of any share or loan capital of any body corporate (including that of the Company or any subsidiary) or the entering into any partnership or profit sharing arrangement by the Company with any person;
		17. any declaration or payment of any dividend or other distribution in respect of any share capital of the Company;

* + 1. the entering into by the Company, or the making of any material change to, any contract or transaction with any person except on normal arm’s length commercial terms;
		2. the entering into by the Company of any agency or distribution agreement which is expressed to contain any element of exclusivity as regards any products or services dealt in or as to the area of the agreement;
		3. the entering into of any licence or other similar agreement relating to intellectual property to be licensed to or by the Company which is otherwise than in the ordinary course of business;
		4. the introduction by the Company of any executive or employee share option or profit sharing or bonus scheme of any nature, and the identity of any executive or employee who will benefit from any such scheme;
		5. the engagement by the Company of any employee at a salary in excess of €[●] per annum, increase remuneration of an employee to a salary in excess of €[●] per annum or dismiss any employee with a salary in excess €[●] per annum; and
		6. the entering into of any agreement for consultancy or management services which will, or is likely to, result in the Company being managed otherwise than by its directors, or which involves a consideration exceeding €[●] per annum.]