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

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

and

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

**MODEL NON-EXCLUSIVE licence agreement**

**MODEL NON-EXCLUSIVE licence 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 “**Licensee**”), [a company incorporated in [●] under registration number [●],] whose [principal place of business *or* registered address] is at [●].

**Background:**

1. The RPO owns certain IP relating to [●].
2. The Licensee wishes to acquire rights under such IP in accordance with the provisions of this Agreement.

**The Parties agree as follows:**

1. **Definitions**

*1.1 Definitions.* In this Agreement, 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. |
| **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 without limitation legal costs) incurred in connection therewith. |
| **Commencement Date** | [●]. |
| **Confidential Information** | 1. The IP; 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. |
| **Disclosing Party** | Has the meaning given in Clause 3. |
| **Field** | The area of [●]. |
| **IP** | The intellectual property referred to in the Schedule. |
| **Licensed Products** | [Any and all products that are manufactured, sold or otherwise supplied by the Licensee or its Affiliate(s) or sub-licensee(s) (if any) and which incorporate or make use of any of the IP.] |
| **[Net Receipts]** | [The amount of any payment (excluding value added tax), and the value of any non-monetary receipt, obtained by, or due to, the Licensee or its Affiliate(s), in relation to the development or sub-licensing (including the grant of any option over a sub-licence) of any of the IP, and including any of the following:1. up-front, milestone (whether at the stage of development, marketing or otherwise), success, bonus, maintenance and periodic (including annual) payments and royalty payments due under any sub-licence agreement;
2. payments in respect of the funding of research or development activities related to any Licensed Product, to the extent that such payments exceed a reasonable level of payment for such activities;
3. where any sub-licence is to be granted under cross-licensing arrangements, the value of any third party licence obtained under such arrangements;
4. any premium paid over the fair market value of shares, options or other securities in respect of any of the share capital of the Licensee or its Affiliate(s) (such fair market value to be determined on the assumption that the RPO had not granted, nor agreed to grant, any rights to the Licensee in respect of any of the IP);
5. any loan, guarantee or other financial benefit made or given other than on normal market terms; and
6. any shares, options or other securities obtained from a third party.]
 |
| **[Net Sales Value]** | [The invoiced price of Licensed Products sold or otherwise supplied by the Licensee or its Affiliate(s) to independent third parties in arm’s length transactions exclusively for money or, where the sale or other supply is not at arm’s length, the price that would have been so invoiced if it had been at arm’s length, after deduction of all documented:1. normal trade discounts actually granted and any credits actually given for rejected or returned Licensed Products;
2. costs of packaging, insurance, carriage and freight, provided in each case that the amounts are separately charged on the relevant invoice;
3. Value Added Tax or other sales tax; and
4. import duties or similar applicable government levies;

provided that such deductions do not exceed reasonable and customary amounts in the markets in which such sales or other supplies occurred. Sales and other supplies between any of the Licensee, its Affiliates and sub-licensees shall not be considered for the purposes of this definition unless there is no subsequent sale or other supply to a person who is not the Licensee, its Affiliate or sub-licensee.] |
| **Parties** | The RPO and the Licensee; and “**Party**” shall mean either of them. |
| **Receiving Party** | Has the meaning given in Clause 3. |
| **Territory** | [●]. |

1. **Grant of rights**

*2.1 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 IP to develop, manufacture, have manufactured, use and sell or otherwise supply, Licensed Products in the Field and in the Territory only.

*2.2 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.

*2.3 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 the IP 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 IP. 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 IP 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.
3. **Confidentiality**

*3.1 Confidentiality obligations.* Each Party (the “**Receiving Party**”) undertakes:

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; and
3. 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 advisers 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.

*3.2 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, Affiliates or sub-licensees.

*3.3 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.
3. **Additional Licensee obligations**

4.1 *Compliance with applicable law.* The Licensee shall, in exercising its rights under this Agreement, comply with all applicable laws, regulations and other similar instruments in the Territory and shall at all times be solely liable and responsible for such due observance and performance.

4.2 *No diminishing of rights.* The Licensee shall not, nor directly or indirectly assist any other person to do or omit to do anything to diminish the rights of the RPO in the IP.

4.3 *Licensee restrictions.* The Licensee shall not use, and shall ensure that its Affiliates and sub-licensees do not use, the name, any adaptation of the name, any logo, trademark or other device of the RPO, in any advertising, promotional or sales materials without prior written consent obtained from the RPO in each case.

**5. Payments**

*5.1 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 (€[●]).

*5.2* [*Royalties on Net Sales Value*. The Licensee shall pay to the RPO a royalty of [●] per cent ([●]%) of the Net Sales Value of all Licensed Products, or any part thereof, sold or otherwise supplied by Licensee or its Affiliates.]

*5.3* [*Royalties on Net Receipts.* The Licensee shall pay to the RPO a royalty of [●] per cent ([●]%) of Net Receipts. For the avoidance of doubt, the provisions of this Clause 5.3 and any references to sub-licensees in this Agreement are without prejudice to the provisions of Clause 2.2.]

*5.4* [*Minimum royalties.* If the royalties payable under Clause 5.2 and Clause 5.3 are less than [●] Euro (€[●]) (“**Minimum Royalty**”) in any calendar year, the Licensee shall pay to the RPO the amount by which such royalties are less than the Minimum Royalty within sixty (60) days of the end of such calendar year, failing which the RPO shall be entitled to terminate this Agreement and the licence granted under this Agreement by notice in writing to the Licensee given at any time after the expiry of the said sixty (60) day period.]

*5.5* [*Payment frequency*. Royalties due under this Agreement shall be paid within thirty (30) days of the end of each quarter ending on 31 March, 30 June, 30 September and 31 December, in respect of sales and other supplies of Licensed Products made and Net Receipts generated during such quarter and within thirty (30) days of the termination of this Agreement.]

*5.6 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];
3. shall be made without deduction of income tax or other taxes charges or duties that may be imposed, except insofar as the Licensee is required to deduct the same to comply with applicable laws. The Parties shall cooperate and take all steps reasonably and lawfully available to them, at the reasonable expense of the RPO, to avoid deducting such taxes and to obtain double taxation relief. If the Licensee is required to make any such deduction it shall provide the RPO with such certificates or other documents as it can reasonably obtain to enable the RPO to obtain appropriate relief from double taxation of the payment in question; and
4. shall be made by the due date, failing which the RPO may charge interest on any outstanding amount on a daily basis at a rate equivalent to [●] per cent ([●]%) above the [●] Bank plc base lending rate then in force in Dublin.

*5.7 Records.* The Licensee shall keep at its normal place of business detailed and up to date records and accounts sufficient to ascertain the payments due under this Agreement. The Licensee shall make such records and accounts available, on reasonable notice, for inspection during business hours by an [independent chartered accountant] nominated by the RPO.

**6. Intellectual property**

*6.1 Infringement of the IP*. Each Party shall inform the other Party promptly if it becomes aware of any infringement or potential infringement of any of the IP, and the Parties shall consult with each other to decide the best way to respond to such infringement.

*6.2 Infringement of third party rights*. 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 Licensed Product or use of any IP, that Party shall promptly provide full details to the other Party, and the Parties shall discuss the best way to respond.

**7. Acknowledgements and liability**

*7.1 Acknowledgements.*

1. Each of the Licensee and the RPO acknowledges and agrees 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 7.1(a), the RPO does not make any representation nor give any warranty or undertaking:
	1. as to the efficacy or usefulness of the IP; or
	2. that the use of any of the IP, the manufacture, sale or use of the Licensed Products or the exercise of any of the rights granted under this Agreement will not infringe any other intellectual property or other rights of any other person.

*7.2 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 or any of its Affiliates or sub-licensees of any of the IP; and/or
2. the development, manufacture, use, marketing or sale of, or any other dealing in, any of the Licensed Products, by the Licensee or any of its Affiliates or sub-licensees, or subsequently by any customer or any other person, including claims based on product liability laws.

*7.3 Conditions for indemnity.* If the RPO seeks indemnification pursuant to Clause 7.2, 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.

*7.4 Liability.*

1. To the extent that the RPO has any liability in contract, tort (including negligence), or otherwise under or in connection with this Agreement, including any liability for breach of warranty, its aggregate liability 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.
2. 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.
3. 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.

*7.5 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 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 and its Affiliates’ and sub-licensees’ use of the IP and use, sale of or any other dealing in any of the Licensed Products. Such insurances may be limited in respect of one claim provided that such limit must be at least six million five hundred thousand Euro (€6.5 million) and shall continue to be maintained by the Licensee for a further six (6) years from the end of the term of this Agreement.

**8. Duration and termination**

*8.1 Commencement and term.* This Agreement, and the licence granted hereunder, shall come into effect on the Commencement Date and, unless terminated earlier in accordance with this Clause 8, shall continue in force for a period of [ten (10)] years.

*8.2 Termination.*

1. 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:
2. at any time on [twelve (12)] months’ notice in writing to the Other Party;
3. 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
4. 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.
5. 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.

*8.3 Consequences of termination*. Upon termination of this Agreement for any reason:

1. the Licensee shall no longer be licensed to use or otherwise exploit in any way, either directly or indirectly, the IP;
2. each Party shall return to the other or, at the other Party’s request, destroy any documents or other materials that are in its or its sub-licensees’ possession or under its or its sub-licensees’ control and that contain the other Party’s Confidential Information; and
3. the provisions of Clauses 3, 5, 7.2, 7.3, 7.4, 7.5, 8.3 and 9 shall remain in force.

**9. General**

*9.1 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.

*9.2 Amendment.* This Agreement may only be amended in writing signed by duly authorised representatives of the RPO and the Licensee.

*9.3 Assignment.* Neither Party shall assign, mortgage, charge or otherwise transfer any rights or obligations under this Agreement without the prior written consent of the other Party.

*9.4 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.

*9.5 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.

*9.6 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.

*9.7 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;
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”.

*9.8 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 9.8. 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).

*9.9 Law and jurisdiction.*

* 1. This Agreement shall be governed by and construed in accordance with 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 9.9(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 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.

*9.10 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.

*9.11 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.

*9.12 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.

*9.13 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, exercising its rights pursuant to this Agreement, including in using the IP and in selling Licensed Products, 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**

**The IP**

[*Insert description of the IP to be licensed by the RPO to the Licensee*]