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

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

and

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

**MODEL NON-EXCLUSIVE, ROYALTY-FREE (NERF) LICENCE AGREEMENT**

**MODEL NON-EXCLUSIVE, ROYALTY-FREE (NERF) 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 office] is at [●].

**Background:**

1. The RPO and the Licensee entered into a written agreement dated [●] (the “**Collaboration Agreement**”) under which the Parties undertook a collaborative research programme relating to [●] (the “**Collaborative Research Programme**”).
2. Under the Collaboration Agreement, the Licensee contributed to the costs of the Research Programme and the RPO declared that, subject to the Parties entering into a separate, written licence agreement, the Licensee would have access to the Foreground IP arising from the Research Programme on a non-exclusive and royalty free basis.
3. Accordingly, the Parties now wish to enter into this Agreement in order to record the terms under which the RPO will grant the Licensee access to the Foreground IP, all as set out below.

**The Parties agree as follows:**

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

|  |  |
| --- | --- |
| **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. |
| **Collaborative Research Programme**  | Has the meaning given to it in the first Background paragraph.  |
| **Commencement Date** | [●]. |
| **Confidential Information** | 1. The Foreground 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.
 |
| **Disclosing Party** | Has the meaning given in Clause 3. |
| **Field** | The area of [●]. |
| **Foreground IP** | The intellectual property referred to in Schedule 1. |
| **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**
	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 Foreground IP for [the Licensee’s own internal purposes *or* commercial purposes] in the Field and in the Territory only.
	2. *Sub-licensing*. The Licensee shall not be entitled to grant sub-licences of its rights under Clause 2.1, except with the prior written consent of the RPO, which consent shall not be unreasonably withheld. Where the RPO gives its consent, the Licensee shall be entitled to grant sub-licences of its rights under this Agreement to any person provided that:
		1. the sub-licence shall include obligations on the sub-licensee which are equivalent to the obligations on the Licensee under this Agreement and limitations of liability that are equivalent to those set out in this Agreement;
		2. the sub-licence shall terminate automatically on the termination of this Agreement for any reason;
		3. the sub-licence shall not permit the sub-licensee to further sub-licence any of its rights to the Foreground IP;
		4. within thirty (30) days of the grant of any sub-licence the Licensee shall provide a true copy of it; and
		5. the Licensee shall be responsible for any breach of the sub-licence by the sub-licensee, as if the breach had been that of the Licensee under this Agreement, and Licensee shall indemnify the RPO against any losses, damages, costs, claims and expenses which are awarded against or suffered by the RPO as a result of any such breach by the sub-licensee.
	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 Foreground IP and reserves all rights outside the Field and the Territory.
		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 Foreground IP. Without limiting the scope of the preceding sentence, the RPO reserves for itself and its affiliates and licensees the irrevocable, worldwide, and royalty-free right to use the whole or any part of the Foreground 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.
2. **Confidentiality**
	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;
		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.

1. **Payments**
	1. [*IP protection costs.* From time to time, and within thirty (30) days of receiving the RPO’s invoice for such amount(s), the Licensee shall reimburse to the RPO [[●] per cent ([●]%)] of all costs, fees and expenses incurred by the RPO after the Commencement Date in respect of obtaining any patents or other types of protection for any intellectual property that forms part of the Foreground IP. The RPO’s invoice shall include a breakdown of how such costs, fees and expenses have been incurred.]
	2. *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].
2. **Intellectual property**
	1. *Patent maintenance, etc.*
		1. The RPO shall control the strategy for seeking patent and/or other types of protection for any intellectual property that forms part of the Foreground IP (the “**IP Strategy**”). Without limiting the preceding sentence, if any patent applications or patents form part of the Foreground IP, the RPO shall remain the ‘client of record’ for patent agents prosecuting such applications and patents.
		2. Notwithstanding Clause 5.1(a), the RPO shall consult with the Licensee regarding the IP Strategy. The Licensee acknowledges that, if the RPO has granted any third party any rights to the Foreground IP, the RPO may additionally consult with any such third party regarding the IP Strategy.
	2. *Infringement of the Foreground IP.*
		1. Each Party shall inform the other Party promptly if it becomes aware of any infringement or potential infringement of the Foreground IPin the Field, and the Parties shall consult with each other to decide the best way to respond to such infringement.
		2. The RPO shall have the first right, at its sole and absolute discretion, to take action against any such infringement. If the RPO elects not to take action, it shall promptly send the Licensee written notice to inform the Licensee of its decision. If the Licensee receives such notice from the RPO, the Licensee shall then be entitled to take action at its sole expense and subject to the following provisions of this Clause 5.2.
		3. Before starting or settling any legal action under Clause 5.2(b), the Licensee shall consult [and agree] with the RPO as to the advisability of the action or settlement, its effect on the good name of the RPO, the public interest, and how the action or settlement should be conducted.
		4. If the RPO has granted any third party any rights to the Foreground IP, the Parties shall also co-operate with such third parties in relation to such action or settlement.
		5. The Licensee shall reimburse the RPO for any reasonable expenses incurred in assisting the Licensee with such action or settlement. In addition, the RPO shall (i) agree to be joined in any action subject to being indemnified and secured in a reasonable manner by the Licensee as to any costs, damages, expenses, or other liability that the RPO may incur, and (ii) have the right to be separately represented by its own counsel at its own expense.
	3. *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 use of the Foreground IP, 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] *OR* [The] RPO shall have the exclusive right to conduct any proceedings relating to the Foreground IP, including any proceedings relating to the alleged infringement of third party rights in the use of the Foreground IP.
3. **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 the Foreground IP; 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 Foreground IP in the Field and in the Territory or (subject to Clause 8.2(b)) any of its rights or obligations under this Agreement.
	2. *Acknowledgements.* The Licensee acknowledges and agrees that:
		1. The Foreground IP is at an early stage of development. Accordingly, specific results cannot be guaranteed and any intellectual property, results, materials, information and 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.
		2. The RPO has not performed any searches or investigations into the existence of any third party rights that may affect the Foreground IP.
	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 Foreground IP; or
			2. that the use of the Foreground IP, 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. as imposing any obligation on the RPO to bring or prosecute actions or proceedings against third parties for infringement of the Foreground IP.
	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 Foreground IP, or the exercise of any of the rights granted to the Licensee under this Agreement; or
		2. a breach by the Licensee of any laws or regulations in the Territory.
	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 [●].
		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 (i) of an indirect, special or consequential nature or (ii) 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 Foreground IP. 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.
4. **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* without limit in time]. [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 thirty (30) days’ notice in writing to the RPO if the Licensee no longer wishes to make the payments under Clause 4.1.]
		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: if the Licensee fails to pay any amount due under Clause 4.1 by the relevant due date.
		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 no longer be licensed to use, either directly or indirectly, the Foreground IP, in so far and for as long as any intellectual property rights that subsist in the Foreground IP remain in force;
			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 possession or under its control and that contain the other Party’s Confidential Information; and
			3. 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.
5. **General**
	1. *Amendment.* This Agreement may only be amended in writing signed by duly authorised representatives of the RPO and the Licensee.
	2. *Assignment.*
		1. Subject to Clause 8.2(b), neither Party shall assign, mortgage, charge or otherwise transfer any rights or obligations under this Agreement, nor any of the Foreground IP, 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 Foreground IP 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.
	3. *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”.
	4. *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 8.4. 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).
	5. *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 8.5(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.
	6. *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.

**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 Foreground IP*

The intellectual property arising from the Collaborative Research Programme and owned by the RPO, namely:

[*Insert a description of each of the specific items of IP that comprise the Foreground IP.*]