

..... 2020

- (1) [FULL LEGAL NAME OF PARTY]¹
- (2) [FULL LEGAL NAME OF PARTY]
- (3) [FULL LEGAL NAME OF PARTY]

CONSORTIUM AGREEMENT
in relation to the Disruptive Technologies Innovation Fund

¹ Comment: Full name of each Industry Party / RPO Party (if any) and Other Party (if any) to be inserted on this page.

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THIS AGREEMENT is made on2020
BETWEEN THE PARTIES whose names and addresses are listed in Schedule 1.

WHEREAS:

- (A) The Parties have submitted a proposal to collaborate on a programme of research, development and innovation to the Department of Enterprise, Trade and Employment in response to a call for applications under the Disruptive Technologies Innovation Fund.
- (B) The intention of the Disruptive Technologies Innovation Fund is to exploit the enterprise opportunities associated with “disruptive technologies” through support for collaborations that involve the sharing of risk and reward.
- (C) The Parties have agreed to the terms of this Agreement, which sets out the manner in which the Project will be regulated and managed.

NOW IT IS HEREBY AGREED in consideration of the rights and obligations of the Parties under this Agreement, each Party agrees as follows:

1. INTERPRETATION

1.1 **Imported Definitions:** Subject to the definitions set out in Clause 1.2, in this Agreement (and in the recitals above) words and expressions defined in or for the purposes of the Grant Agreement shall, unless it is otherwise expressly provided, have the same meanings when used in this Agreement.

1.2 **Definitions:** In this Agreement and in the recitals above, unless the context otherwise requires or unless otherwise specified, the following terms shall have the following meanings:

“**Affiliate**” means in relation to a Party, means any entity or person that Controls, is Controlled by, or is under common Control with that Party;

“**this Agreement**” means this agreement including the Schedules and any attachments or annexes, together with any amendments to same which the Parties may make from time to time in accordance with this Agreement, subject to the prior written consent of the Funding Body;

“**Background**” means IP (regardless of the form or medium in which they are disclosed or stored) which are provided by a Party pursuant to this Agreement, but excluding any Foreground IP;

“**Budget**” means each Party’s budget in respect of the Project as set out in their respective Grant Agreements;

“**Category A Background**” means Background that is:

- (a) made available free of charge for use in a particular Work Package; and
- (b) may be used to the extent necessary to Commercialise Foreground IP arising from that particular Work Package free of charge;

“**Category B Background**” means Background that is:

- (a) made available free of charge for use in a particular Work Package; and
- (b) may be used on Reasonable Commercial Terms and Fair Market Rates to the extent necessary to Commercialise Foreground IP arising from that particular Work Package;

“**Commencement Date**” means [●];

“**Commercialise**” or “**Commercialisation**” means:

- (a) to make, use, sell or otherwise exploit a product incorporating or utilising any of the Foreground IP;
- (b) to use or otherwise exploit a process incorporating or utilising any of the Foreground IP and/or to make, sell or use a product resulting from such a process;
- (c) to provide a service incorporating or utilising any of the Foreground IP;
- (d) to use any of the Foreground IP for research purposes that are other than those contained in the Project; and/or
- (e) to license any third party to do any of the activities at (a) to (d) above;

“**Committee**” means any committee, panel, board or group contemplated by Schedule 3 or established pursuant to Clause 4.5(f) (*committees*);

“**Completion Date**” means [●];

“**Confidential Information**” means any information relating to the business, affairs, technology, products or processes of a Disclosing Party that:

- (a) 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;
- (b) in respect of information that is imparted orally, described by the Disclosing Party or its representatives to the Receiving Party as being confidential at the time of disclosure [and confirmed in writing, marked confidential and sent to the receiving party within [28] days of the oral disclosure];
- (c) is a copy of any of the foregoing; or

- (d) due to its character or nature, a reasonable person in a like position to the Receiving Party and under like circumstances would consider confidential;

“**Conflict**” means, with respect to any Party, any matter, circumstance, interest or activity affecting that Party (including any of its Personnel) (the “**Affected Party**”) which could or could appear to do any of the following:

- (a) impair the ability of:
 - (i) the Affected Party to carry out its part of the Project; and/or
 - (ii) the Parties to carry out the Project, in a diligent, independent, effective, ethical and appropriate manner and in accordance with this Agreement and/or any Grant Agreement; or
- (b) otherwise impair the ability of the Affected Party and/or the Parties to comply with its obligations under this Agreement and/or any Grant Agreement;

“**Consortium Project Manager**” means [●] or such other person as the Parties shall designate from time to time (being an individual from within one of the Parties’ Personnel);

“**Consortium Project Management Work Package**” means the Work Package in Schedule 2 relating to management of the Project;

“**Control**” means possession of the power to direct or cause the direction of the management and policies of a person whether by membership, ownership, contract or otherwise. “**Controlled**”, “**Controls**” and other cognate words and expressions shall be construed accordingly;

“**Contribution**” means money, which is not a loan, that is immediately available, upon contribution, to the Project for expenditure on the Project;

“**Data Protection Acts**” means the Data Protection Acts 1988 to 2018, as amended, revised, modified or replaced from time to time;

“**Data Protection Law**” means all legislation and regulations relating to the protection of personal data including (without limitation) the Data Protection Acts and GDPR and all other statutory instruments, industry guidelines (whether statutory or non-statutory) or codes of practice or guidance issued by the Data Protection Commission of Ireland relating to the processing of personal data or privacy or any amendments and re-enactments thereof;

“**Defaulting Party**” has the meaning given to that term in Clause 13.2 (*expulsion*);

“**Disclosing Party**” means a Party disclosing Confidential Information to another Party in connection with the Project;

“**Equipment**” means any piece of equipment purchased from Project Funds;

“Export Control Rules” means any export and import laws and associated embargo and economic sanction regulations, including those administered by Ireland, the EU and the United States to the extent they apply to a Party’s activities under this Agreement;

“Fair Market Rates” means compensation equivalent to market price, being an amount equal to the amount which a third party licensee or assignee would pay for the same licence or assignment in an arm’s length commercial transaction, but taking into account the true market value of any financial or other contribution which the proposed licensee/assignee may have made to the creation of the IP (including any Category B Background so contributed which was used in developing the IP in question) which are the subject of the licence/assignment;

“Field” means [●];

“Force Majeure Event” means circumstances beyond the reasonable control of any Party, including labour disputes involving that Party, which may lead to a delay or failure of performance of obligations under this Agreement;

“Foreground IP” means all IP which is produced, invented or discovered in whole or in substantial part by any of the Parties and/or their Personnel in the course of the Project, whether on their own or in collaboration with any of the other Parties and/or their Personnel;

[**“FOIA”** means the Freedom of Information Act 2014, as amended, revised, modified or replaced from time to time;]²

“Funding Body” means Enterprise Ireland acting on behalf of the Department of Business Enterprise and Innovation;

“GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679);

“Generate” means a person shall be taken to participate in the generation of:

- (a) an invention, only if he/she is considered the, or an, inventor of that invention under Irish patent law as it stands on the date on which the invention is made;
- (b) copyright, only if he/she is the, or an, author of the work in question for the purposes of Irish copyright law as it stands on the date on which the work is generated; and
- (c) Know-how or information only if he/she makes a significant intellectual contribution to its generation; and for these purposes the contribution of previously generated IP does not constitute a significant intellectual contribution; and

² Comment: Only relevant for inclusion where there are RPO Parties.

the term ‘*generated*’ includes a reference to the expressions ‘*discovered*’, ‘*conceived*’, ‘*first reduced to practice*’, ‘*created*’, and ‘*developed*’, and terms cognate with the term ‘*generated*’ shall be understood accordingly.

“**Grant Agreements**” means each of the agreements between the Funding Body on the one part and the relevant Party on the other listed in Schedule 6 setting out the terms on which the Funding Body agrees to provide the Project Funds to that Party, and including the schedules and any attachments and annexes thereto, together with any amendments to same which the Funding Body may notify to that Party in accordance with the relevant Grant Agreement and “**Grant Agreement**” shall mean any of them;

“**Improvements**” means any improvement, development, adaptation, enhancement, alteration or modification to, or new application of, Background, which is produced, invented or discovered in whole or substantial part by any of the Parties and/or their Personnel in the course of performing their work under the Project, whether on their own or in collaboration with any of the other Parties and/or their Personnel;

“**Introducing Party**” has the meaning given to that term in Clause 9.1 (*ownership of background*);

“**Industry Parties**” means the Parties listed at Schedule 1, Part A and any other person admitted to the Project after the date of this agreement as an “Industry Party”;

“**IP**” means any and all discoveries, inventions, concepts, ideas, patents, trade marks, service marks, registered designs, drawings, utility models, design rights, copyright (including the copyright in software in any code), database rights, trade secrets and other confidential information, technical information, technology, know-how, business ideas, methods, models, procedures, processes, specifications, techniques, concepts, business or trade names, goodwill and all other intellectual property and rights of a similar or corresponding nature in any part of the world, whether registered or not, or capable of registration or not, and including all applications and the right to apply for any of the foregoing rights;

“**JOMA**” means the joint ownership management agreement to be entered into between the Owing Parties of jointly owned Foreground IP to be based substantially on the national Joint Ownership Management Agreement described in Schedule 5;

“**Know-how**” means unpatented technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain;

“**Lead Owing Party**” means the Party specified in the JOMA as the Party who has agreed to take the lead in relation to Commercialisation of the Foreground IP;

“**Lead Partner**” means [●];

“**Licence**” means with respect to any particular Foreground IP, a licence (including the right to grant sublicences) to use the particular Foreground IP in question in the Field for the purpose of research and Commercialisation, on Reasonable Commercial Terms and at Fair Market Rates and on such other terms as the Owing Party (or Lead Owing Party) and the Party in question may agree;

“**Material Breach**” has the meaning set out in the Grant Agreements;

“**Negotiation Period**” means with respect to each Party and Foreground IP, a period of [90 days] from and including the date on which the Consortium Project Manager receives written notification from the Party in question that it wishes to exercise the option in respect of the Foreground IP in question;

“**Option**” means an option granted pursuant to this Agreement to negotiate a licence to Foreground IP;

“**Option Period**” means a period commencing on the date on which the Parties are notified in writing in accordance with Clause 9.9(a) (*commercialisation of foreground IP*) that the Foreground IP in question is available for licensing and ending six months after completion or termination of the Project;

“**Owing Party**” means a Party in whom ownership of Foreground IP vests pursuant to the terms of this Agreement;

“**Other Parties**” means the Parties listed at Schedule 1, Part C and any other person admitted to the Project after the date of this agreement as an “Other Party”

“**Party**” means any party to this Agreement;

“**Personnel**” means the employees, consultants, subcontractors, students and all other personnel of a Party;

“**Project**” means the research, development and innovation programme to be undertaken by the Parties, details of which are set out in Schedule 2;

“**Project Funds**” means all money received for, or as a result of, the Project, including, without limitation, funds received under the Grant Agreements and Contributions, but not including any proceeds derived from the Commercialisation of the Foreground IP;

“**Project Representative**” means the member of a Party’s Personnel who has been designated by the Party as its representative for the purpose of all Project affairs, which may or may not include taking on the role of Work Package Leader;

“**Publish**” and “**Publication**” means disclosing into the public domain (whether in Ireland or elsewhere) of any aspects of the Foreground IP, including but not limited to, by means of:

- (a) the submission of any paper, abstract, article or similar document to a journal, newspaper, magazine or periodical, conference, seminar, workshop or similar event, whether in written, electronic or any other form;
- (b) a verbal or poster presentation (whether formal or informal) at a conference, seminar, workshop or similar event; or
- (c) exchange of information through an internet website or email forum;

“**Publishing Party**” means any Party wishing to publish results generated in the course of undertaking a Work Package;

“**Receiving Party**” means the Party receiving Confidential Information from another Party in connection with the Project;

“**Reasonable Commercial Terms**” means such terms and conditions as would usually be found in a licence or assignment (as appropriate) of the IP in question in an arm’s length commercial transaction between a licensor/ anyone primarily engaged in research and teaching activities and a licensee/ assignee engaged in commercial activities with a view to generating a profit;

“**Restricted Materials**” means any technical data, technology, services, products or materials that are subject to Export Control Rules;

[“**RPO Party**” means any Party listed at Schedule 1, Part B (if any) that is a research performing organisation (including academic institutions and state funded research organisations) and any other person admitted to the Project after the date of this agreement as an “RPO Party” and “**RPO Parties**” shall be construed accordingly;]³

“**Term**” means the duration of this Agreement, as specified in Clause 2.2 (*duration*);

“**Trade Secret Result**” means for as long as it remains a trade secret, any new, useful and non-obvious Foreground IP for which an authorised representative of each of the Work Package Parties agrees in writing after reviewing an invention disclosure drafted by an inventor

- (a) on the features and scope of the invention; and
- (b) to keep that Foreground IP trade secret;

“**Work Package**” means any programme of work as specified in Schedule 2;

“**Work Package Leader**” means the individual appointed from the Party or from within the Parties in a particular Work Package to lead that Work Package;

“**Work Package Party**” means each Party participating in that Work Package; and

³ Comment: Only relevant for inclusion where there are RPO Parties.

“**Work Package RPO Party**” means, in respect of a particular Work Package, each RPO Party participating in that Work Package⁴.

1.3 **Interpretation:** In this Agreement, unless otherwise expressly provided or unless the context otherwise requires:

- (a) the headings are used for convenience only and shall not affect its interpretation;
- (b) references to persons shall include incorporated and unincorporated persons; references to the singular include the plural and vice versa; and references to either gender include the other and the neuter;
- (c) references to Clauses and Schedules mean clauses of, and schedules to, this Agreement;
- (d) references in this Agreement to termination shall include termination by expiry;
- (e) where the word "including" is used it shall be understood as meaning "including without limitation";
- (f) time shall be construed by reference to time in Ireland;
- (g) 'this Agreement' mean the Clauses of, and the Schedules to, this Agreement, all of which shall be read as one document; and
- (h) 'business day' shall be construed as a reference to a day (other than a Saturday or Sunday) on which the banks are generally open for business in Ireland.

1.4 **Certain Rules of Construction dis-applied:** If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.

1.5 **Schedules:** The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and accordingly any reference to this Agreement includes the said Schedules. In the event of any conflict or inconsistency between the terms contained in the Clauses of this Agreement and any part of the Schedules then the terms and conditions of the Clauses shall take precedence.

2. **SCOPE OF THE PROJECT**

2.1 **Project:** The Parties shall carry out the Project according to the project plan described in Schedule 2. Each of the Parties shall use all reasonable endeavours to obtain all

⁴ Comment: Only relevant for inclusion where there are RPO Parties.

regulatory and ethical licences, consents and approvals necessary to allow it to carry out the tasks allotted to it in Schedule 2.

2.2 **Duration:** The Project shall be carried out from the Commencement Date until the Completion Date or until such later date as may be agreed in writing between the Parties, or until it is terminated in accordance with the terms of this Agreement.

2.3 **Location:** All Work Packages shall be conducted in Ireland unless with the written approval of the Funding Body (where such approval is necessary or desirable).

3. GRANT AGREEMENTS

3.1 Nothing in this Agreement shall reduce or otherwise affect the obligations of the Parties to the Funding Body under their respective Grant Agreements and this Agreement shall take effect with such modifications as may be required by the Funding Body or which the Parties may otherwise agree from time to time as being necessary to ensure that the Project is conducted in all material respects in accordance with the provisions of the relevant Grant Agreement. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of any Grant Agreement then the terms of that Grant Agreement shall prevail.

4. MANAGEMENT AND GOVERNANCE

4.1 **Organisation and Operation:** The Project shall be organised, and its activities and affairs governed and conducted in the manner contemplated by this Clause 4 and in accordance with Schedule 3.

4.2 Consortium Project Management

- (a) The Project shall be managed in accordance with the Consortium Project Management Work Package.
- (b) A suitably experienced individual from within one of the Party's Personnel shall be designated to act as Consortium Project Manager.
- (c) The Parties agree that the role of the Consortium Project Manager will involve:
 - (i) acting as the intermediary between the Parties and the Funding Body and performing all tasks assigned to it as described in the Grant Agreements and in this Agreement;
 - (ii) monitoring compliance by the Parties with their obligations;
 - (iii) keeping the address list of Parties and other contact persons updated and available;

- (iv) collecting, reviewing to verify consistency and submitting reports, other deliverables (including financial statements and related certifications) and specific requested documents to the Funding Body;
 - (v) transmitting documents and information connected with the Project to any other Parties concerned;
 - (vi) recording Committees and memberships and documenting, storing and circulating amongst Parties any Committee procedures; and
 - (vii) any other duties as listed in Schedule 3.
- (d) The Consortium Project Manager shall not be entitled to act or to make legally binding declarations on behalf of any other Party and shall not enlarge his or her role beyond the tasks specified in this Agreement.
- (e) Each Party shall provide the Consortium Project Manager with such co-operation as he or she may reasonably require to enable him or her to perform its functions and the Party that engages the Consortium Project Manager from within its Personnel shall support the Consortium Project Manager to ensure that he or she can carry out his or her role successfully.

4.3 **Work Package Leaders:**

- (a) Each Work Package shall be led by an appropriately qualified Work Package Leader as described in Schedule 2.
- (b) Each Work Package Leader shall be accountable for the delivery of the overall outcomes for the particular Work Package in respect of which he or she has been designated. Each Work Package Leader shall also:
 - (i) manage the activities of his/her team in pursuit of the objectives of the Work Package,
 - (ii) be responsible for the efficient and proper conduct and administration of the relevant Work Package,
 - (iii) be responsible for the timely keeping of proper books and records in respect of both the financial affairs of the relevant Work Package and, as appropriate, the scientific progress and Foreground IP developed in the course of that Work Package and/or any related dissemination and exploitation with a view to ensuring that the obligations with respect to the maintenance of financial, scientific dissemination and exploitation records in accordance with the terms of each Grant Agreement can be complied with;
 - (iv) report on the progress of his/her Work Package to the Consortium Project Manager in the manner described in Schedule 3; and

- (v) be responsible for notifying the Consortium Project Manager of any Foreground IP.

4.4 **Parties:** Each Party shall within 30 days of being admitted to the Project designate one of its Personnel as its Project Representative for the purpose of all Project affairs, which may or may not include taking on the role of Work Package Leader, and shall notify the Consortium Project Manager of that designation and any replacement of that representative from time to time. Each Party, including the Consortium Project Manager, shall ensure that the role of Project Representative is not vacant for more than 20 business days.

4.5 **Committees:**

- (a) The number and structure of Committee(s) is as described in Schedule 3.
- (b) Each such Committee shall comprise:
 - (i) one representative from each Party (other than in circumstances where the Committee relates to a particular Work Package only in which case the Committee shall comprise one representative from each Work Package Party);
 - (ii) a chairperson, who may be nominated from within membership of that Committee or may be an independent chairperson; and
 - (iii) such other persons as deemed appropriate by that Committee and agreed with the Consortium Project Manager, where a person not party to this Agreement is appointed to a Committee they shall, prior to their appointment, execute and deliver an undertaking in the form approved by the Consortium Project Manager covenanting with the Parties to observe, perform and be bound by all provisions in this Agreement which are capable of applying to such person and which have not been performed.
- (c) Within the Committee structure the following functions shall, at a minimum, be provided for and appropriate processes agreed and documented:
 - (i) monitoring the development of the Project periodically and making decisions on any action required to improve any aspect of the Project's performance;
 - (ii) overseeing and managing any conflict (or potential conflict of interest) that may arise within and amongst the Parties in relation to the Project
 - (iii) approving the admission of new members;
 - (iv) identifying a breach by a Party of its obligations under this Agreement or any Grant Agreement;

- (v) declaring a Party to be a Defaulting Party and determining remedies to be performed by a Defaulting Party;
 - (vi) termination of a Defaulting Party's participation in the Project and measures relating thereto;
 - (vii) making any proposal to the Funding Body for suspension of all or part of the Project;
 - (viii) making any proposal to the Funding Body for termination of the Project and this Agreement;
 - (ix) supporting the Consortium Project Manager in preparing meetings with the Funding Body and in preparing related data and deliverables;
 - (x) preparing the content and timing of press releases and joint publications by the Parties or proposed by the Funding Body in relation to the Project; and
 - (xi) collecting information at least every six months on the progress of the Project.
- (d) Unless otherwise provided at Schedule 3, the proceedings of each Committee shall be conducted as follows:
- (i) Each Committee shall meet as often as may be required and, in any event, at least [●] times in the first year of the Term and at least [●] in each subsequent year of the Term.
 - (ii) The quorum for meetings of each Committee shall be [two thirds] of the members of the Committee.
 - (iii) Meetings of each Committee shall be chaired by the chairperson or, in his/her absence, by a person chosen by the members of the Committee present from among their number.
 - (iv) All business of meetings of each Committee (other than procedure and conduct of the meeting) shall be decided by a majority of the votes of the members present and voting. In the event of an equality of votes, the chair of the meeting shall have a casting vote.
 - (v) A decision made or a resolution passed at a duly convened and quorate meeting of each Committee shall be binding on all Parties, and all the Parties shall be obliged to join in taking any action necessary or expedient to carry any such decision or resolution into effect provided that such decision or resolution does not constitute an amendment to the terms of this Agreement.

- (vi) Any representative on a Committee may from time to time appoint any person who is approved of by the Party appointing him/her to be an alternate or substitute for him/her as a representative on the Committee. The alternate or substitute shall be entitled to vote at meetings of the Committee and shall be counted in the quorum. Any appointment under this provision shall be by notice in writing to the chairperson of the relevant Committee and may be revoked at any time by the appointer, and the appointment of any alternate or substitute representative shall cease when his/her appointer ceases to be a representative on the Committee.
- (e) The reporting roles of the Committees is as described at Schedule 3. Minutes of Committee meetings, once accepted, shall be sent to the Consortium Project Manager who shall circulate to other Committees and Project Representatives, as provided for at Schedule 3.
- (f) The Parties may constitute additional Committees. Any determination to constitute any such Committee shall specify the composition and functions of, and procedural rules for meetings of, that Committee and in default of any such determination the provision of Clauses 4.5(b), 4.5(d), 4.5(e) and 4.7 shall apply to any additional Committee.

4.6 **Termination of Work Packages:**

- (a) The Parties may agree to terminate a Work Package so that it is no longer conducted at or under the auspices of the Project if that Work Package is not performing or if it no longer has support from the Parties, subject to approval by the Funding Body and the terms of the relevant Grant Agreement.
- (b) The process for agreeing termination shall be as determined by the relevant Committee in accordance with Schedule 3.

4.7 **Conflicts of Interest:**

- (a) The provisions of this Clause 4.7 apply to:
 - (i) any Party; and
 - (ii) any member of a Committee.
- (b) It shall be the duty of each individual to whom this Clause 4.7 applies who is in any way, whether directly or indirectly, interested in any matter coming before him/her or it for consideration or decision to declare the nature of his/her interest:

- (i) in the case of a Party, to the [Project Board]⁵;
 - (ii) in the case any Committee member, at the meeting concerned, in each case before involving himself in the giving of consideration, or the making of any decision, in relation to that matter.
- (c) For the purposes of this Clause 4.7, a general notice given to the appropriate Committee by an individual to the effect that, under Clause 4.7(d) he/she is deemed to possess the interests of a named company, firm or other person, and is to be regarded as being interested in any matter concerning that company, firm or other person, shall be deemed to be a sufficient declaration of interest in relation to all such matters.
- (d) For these purposes, an individual shall be treated as having the interests of:
- (i) his/her employer;
 - (ii) each person to whom he/she provides services on a consultancy basis (whether directly or through the medium of any company); and
 - (iii) any company or business in which he/she has an interest, whether that interest is held directly or indirectly through the medium of one or more trusts or companies (but a non-material interest in a publicly quoted company which is held solely for investment purposes shall be ignored for the purposes of this Clause 4.7).

5. CONTRIBUTIONS

Each Party agrees to make the Contribution(s) as specified in their respective Grant Agreements to be made by them for the sole purpose of pursuing the Project.

6. ACCOUNTS AND RECORDS

6.1 **Financial Accounts:** Each Party shall keep separate financial accounts which shall record:

- (a) its Contributions;
- (b) the portion of the Project Funds paid to it in respect of the Project in respect of each year; and
- (c) all expenditure incurred by the Party from the payments referred to at Clause 6.1(b) in carrying out the Project.

6.2 **Obligations:** Each Party undertakes:

⁵ Comment: If the governing structure does not provide for a Project Board, the name of the relevant Committee per Schedule 3 should be inserted here instead.

- (a) to maintain its records and accounting books in relation to the Project in accordance with generally accepted accounting principles of Ireland from time to time;
- (b) upon reasonable notice to provide the Funding Body and its agencies access to the information, premises, records, documents, materials and Personnel as specified in the applicable Grant Agreement;
- (c) to conduct its operations in accordance with best practice principles of governance; and
- (d) to ensure that any sub-contract entered into by it for the purpose of this Agreement contains an equivalent Clause requiring any such subcontractor to grant the rights specified in this Clause 6.2.

7. **EQUIPMENT**

- 7.1 **Ownership:** Notwithstanding any other provision in this Clause 7, the Parties agree that any and all Equipment shall be owned by the Party specified in their respective Budgets.
- 7.2 **Location:** Unless otherwise agreed between the Parties, the Equipment referred to at Clauses 7.1 shall remain at the premises of the Party having title to the Equipment.
- 7.3 **Obligations of the Owner:** During the Term, the Party having title to any equipment to which Clauses 7.1 applies:
 - (a) shall not sell, hire, charge, mortgage, pledge or otherwise encumber the Equipment;
 - (b) shall ensure that the said Equipment is properly insured and maintained in good working order and, if required, repaired and replaced, and shall be responsible for any other costs and liabilities associated with the said Equipment; and
 - (c) shall make the said Equipment available to all the other Parties for the Project.

8. **WARRANTIES AND UNDERTAKING**

- 8.1 **No Implied Warranties etc.:** The Parties acknowledge that, in entering into this Agreement, they do 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.
- 8.2 **Entitlement to Enter the Contract:** Each Party warrants to the other Parties that they have full power and authority under its constitution and has taken all necessary actions

and obtained all authorisations, licences, consents and approvals, to allow it to enter into this Agreement.

- 8.3 **No Conflicts:** Each Party warrants to the other Parties that it has not entered into any agreement or arrangement which conflict with or would breach any of the obligations placed on it pursuant to any of this Agreement or the relevant Grant Agreement, and undertakes not to do so.
- 8.4 **Performance of the Project:** Each Party shall carry out the research and tasks which it is specified to perform in the project plan set out in Schedule 2, and provide the human resources, materials, facilities and equipment that are designated to be provided by it in the project plan, in each case in a timely manner, in accordance with good accepted research practice and all applicable laws, and with due regard for the health and safety of those involved in the Project.
- 8.5 **Personnel:** Each Party agrees to furnish the necessary qualified Personnel for the implementation of its obligations under each Work Package in which it participates and each Party shall be solely responsible and liable for the performance of the Agreement by its Personnel.
- 8.6 **Use of Results or Outcome:** Each Party shall be responsible for the use to which it puts any technology, product, process, method, discovery, software, information, material or data developed during the course of or otherwise arising from the Project.
- 8.7 **No Other Warranties:** Each Party acknowledges that this Agreement provides for the performance of research and that specific results cannot be guaranteed. The Parties do not warrant or undertake that any result or outcome, whether stated in this Agreement or not, shall be achieved, be achievable or be attained at all or by a given Completion Date or any other date, nor does either Party give any warranty that the content or use of any results, IP, reports, information or other materials provided in connection with this Agreement will not constitute or result in any infringement of third-party rights.

9. INTELLECTUAL PROPERTY AND COMMERCIALISATION

- 9.1 **Ownership of Background:** All Background shall remain the property of the Party who introduces the Background (the “**Introducing Party**”) or its licensors.
- 9.2 **Register of Background:**
- (a) Schedule 4 sets out a list of Background that the Parties have agreed to make available for the Project as at the date of this Agreement, together with details of any restrictions or encumbrances on the use of that Background and whether that Background is classified as Category A Background or Category B Background.
 - (b) Any Party wishing to make available additional Background for use in the Project after the date of this Agreement shall provide the Consortium Project Manager with a written description of the Background together with:

- (i) details of any restrictions or encumbrances on the use of that Background and the category (A or B) that shall apply to such Background. Where no category is indicated for Background, such Background shall be deemed to be Category A Background; and
 - (ii) the particular Work Package for which the Background is made available.
- (c) The Consortium Project Manager shall inform all Parties of the introduction of this background and the introduction of any such Background shall be subject to the prior written approval of the other Parties (such approval shall not be unreasonably withheld or delayed).
- (d) No Party may withdraw or make any amendments to the terms and conditions of any Background without the prior written approval of the other Parties (such approval shall not be unreasonably withheld or delayed).

9.3 **Improvements:** Improvements to Category A Background and Category B Background during the course of the Project shall be considered to be Foreground IP and shall be treated accordingly.

9.4 **Use of Background:**

- (a) The Introducing Party grants and agrees to grant to each of the Work Package Parties that require same, a non-exclusive royalty-free, non-assignable, worldwide licence to use that Introducing Party's Background solely for the purpose of, and to the extent reasonably necessary for, carrying out its work under the relevant Work Package(s), and for no other purpose, and only for the Term.
- (b) The licence granted by an Introducing Party pursuant to Clause 9.4(a) shall not include a right to grant sublicences, save for a right to grant sublicences to any subcontractors or other third parties approved by the Parties pursuant to Schedule 3 and to the extent reasonably necessary for, carrying out its work under the particular Work Package(s), to be subject to only those restrictions on its use which have been specified in writing in the register in accordance with Clause 9.2 above. Any such agreement with subcontractors or other third parties shall impose confidentiality obligations on the subcontractors or (as the case may be) third parties at least no less than those contained in this Agreement.

9.5 **Licence to Background for Commercialisation:** If any Party wishes to Commercialise any Foreground IP owned by or licensed to it and:

- (a) the Foreground IP in question has been developed using certain Background in accordance with this Clause 9; and

- (b) the Foreground IP in question cannot be Commercialised without the incorporation of the said Background as a component of or in conjunction with the Foreground IP in question or to Commercialise Foreground IP would infringe Background of another Party.

then the Introducing Party of that Background shall grant and agrees to grant a Party who owns or is requesting a Licence to any Foreground IP:

- (i) in respect of Category A Background: a royalty-free, non-exclusive licence (with the right to sublicense) or;
- (ii) in respect of Category B Background: a royalty-bearing, non-exclusive licence (with the right to sublicense) upon reasonable commercial terms taking into account the contribution of the Parties to the agreement to be agreed for the purposes of Commercialising those Foreground IP(s).

9.6 **Ownership:** The Parties agree that all Foreground IP shall be owned by the Parties as follows:

- (a) Foreground IP generated by the Personnel of a single Party shall be solely owned by that Party; and
- (b) Foreground IP generated by the Personnel of more than one Party shall be jointly owned and the Owing Parties shall enter into a JOMA within six months from the time of creation of such Jointly-Owned Foreground. Such JOMA shall specify one of the Owing Parties as the Lead Owing Party for the purpose of Commercialisation of the jointly owned Foreground IP.

9.7 **Notification of Foreground IP:**

- (a) The Consortium Project Manager shall inform the Parties in the Project of details of all Foreground IP resulting from Work Packages.
- (b) Each Work Package Leader shall provide the Consortium Project Manager with regular reports summarising the progress of the Work Package for which he/she is responsible and details of all Foreground IP resulting from that Work Package.
- (c) Within a particular Work Package, each Work Package Party shall inform the relevant Work Package Leader of any Foreground IP generated by its Personnel.
- (d) All such notifications in accordance with this Clauses 9.7 shall be within the timescales and in the manner prescribed in Schedule 3.

9.8 **Access Rights to Foreground IP in Work Packages:**

- (a) Each Owing Party grants and agrees to grant each other Party a royalty-free non-exclusive worldwide licence to use its Foreground IP, solely for the

purposes of carrying out its work in the relevant Work Package(s), and for no other purpose, and only for the Term.

- (b) The licence granted pursuant to Clause 9.8(a) shall not include a right to grant sublicences, save for a right to grant sublicences no broader than the extent of the licence to any subcontractors or other third parties approved by the Parties pursuant to Schedule 3.

9.9 **Commercialisation of Foreground IP:**

- (a) The Consortium Project Manager shall notify the Parties in writing of the availability of Foreground IP for Commercialisation which shall count as the effective date for the commencement of the Option Period. The timing of such notification shall be as agreed at Schedule 3.
- (b) Each Party shall have the option during the Option Period to commence negotiation of a Licence to such Foreground IP.
- (c) If any Party wishes to exercise an Option, it shall notify the Owing Party or Lead Owing Party, as appropriate, in writing within the applicable Option Period.
- (d) On receipt of the notification to exercise the Option, the Owing Party or Lead Owing Party and the Party in question shall negotiate in good faith, with the aim of concluding a Licence during the Negotiation Period.
- (e) If a Party does not exercise an Option within the applicable Option Period then that Party's Option shall lapse.
- (f) If a Party exercises an Option and no Licence is agreed within the Negotiation Period, that Party's particular Option shall lapse.

9.10 ⁶**[Rights Reserved for RPO Parties:** Subject to any restrictions attaching to Background introduced into a Work Package and subject to the confidentiality provisions set out in this Agreement, each Work Package RPO Party shall have the irrevocable, perpetual royalty-free right to use all Foreground IP arising from Work Packages in which it participates for internal research and teaching purposes in all fields of use and applications.]

9.11 **Personnel:** Each Party shall ensure that all its Personnel:

- (a) maintain adequate and secure records, either electronically or in laboratory books, for the purpose of establishing inventors and invention dates and;
- (b) keep, and instruct the researchers within his/her team to keep dated written records of all Foreground IP, duly signed and witnessed.

⁶ Comment: Only relevant for inclusion where there are RPO Parties.

- (c) Assign any rights they may have in any Foreground IP to it in order to be able to give full effect to the provisions of this and this Agreement; and
- (d) otherwise comply with the obligations this Agreement.

9.12 **Protection of Foreground IP:**

- (a) Each Party shall procure that any Foreground IP generated by its Personnel which may have commercial value is recorded in an invention disclosure form which shall include at a minimum a summary of the potential IP; all sources of funding which were used in support of the research which contributed to the generation of the IP; names and affiliations of all individuals who are considered to have made (i) a conceptual and inventive contribution to the generation of the IP and (ii) a practical (non-inventive contribution). The Innovation Disclosure Form hosted on the Knowledge Transfer Ireland website as detailed in Schedule 5 may be used for this purpose.
- (b) A Party may take such steps as it may decide at their discretion, and at its own expense, to register and maintain any protection for the Foreground IP which it solely owns, including filing and prosecuting patent applications for any of the Foreground IP which it solely owns, and taking any action in respect of any alleged or actual infringement of the Foreground IP which it solely owns, and shall have sole control over the management, protection and defence of those Foreground IP going forward.
- (c) Joint owners of Foreground IP shall have control over the management, protection and defence of the Foreground IP in the manner specified in the Joint Ownership Management Agreement that they shall enter into as at Clause 9.6(b).

9.13 **[Compliance with state aid rules:** If it is necessary to amend any of the provisions of this Clause 9 or the terms of any licence or assignment to Foreground IP granted pursuant to the provisions of this Clause 9 to ensure compliance with state aid law rules then the Parties (or the relevant Parties, as the case may be) shall amend the arrangements accordingly.]⁷

9.14 **Use of templates:** Licences contemplated by this Agreement shall be based on the national Model Agreements that are hosted on the Knowledge Transfer Ireland website as described in Schedule 5.

10. **PUBLICATION**

10.1 **Notification:** Each Publishing Party shall submit a copy of the proposed Publication in writing to each of the other Work Package Parties and to the Consortium Project Manager at least 30 days before the date of the proposed Publication.

⁷ Comment: Only relevant for inclusion where there are RPO Parties.

- 10.2 **Delay for protection of IP:** If the Work Package Parties and the relevant Committee set up to review dissemination and exploitation of Foreground IP believe that delay is needed in order to seek patent or similar protection for any of the Work Package Parties' Background or any Foreground IP, that Committee may by giving written notice to the Publishing Party require the Publishing Party to delay the proposed publication for a maximum of 90 days or other such time as Publishing Party and the relevant Committee set up to review dissemination and exploitation of Foreground IP may agree, or until any affected IP is protected, whichever is the sooner.
- 10.3 **Removal of Confidential Information:** All Background shall be treated as Confidential Information belonging to the Introducing Party. All Trade Secret Results shall be treated as Confidential Information belonging to the Owning Party. The relevant Introducing Party or Owning Party may by giving written notice to the Publishing Party require the removal of any of such Confidential Information from the publication.
- 10.4 **No notice:** If the Publishing Party does not receive any notice in accordance with Clause 10.2 or Clause 10.3 within 30 days of its submission of the proposed Publication pursuant to Clause 10.1, it may proceed with the proposed Publication after the Notice Period, save that it can do so earlier if it has received the prior written consent of all Work Package Parties and the relevant Committee (as provided for in Schedule 3) set up to review dissemination and exploitation of Foreground IP to do so.
- 10.5 **Background:** Notwithstanding the foregoing provisions of this Clause 10, no Party shall Publish the Background of any other Party without first obtaining the express written approval of that Party
- 10.6 **Student Thesis:** By way of exception to the Publication procedure set out in this Clause 10, any registered student of an RPO Party that is a third level academic institution may submit for a degree of that RPO Party a thesis based on any Foreground IP, the examination of such a thesis by examiners appointed by that RPO Party, or the deposit of such a thesis in a library of that RPO Party in accordance with the relevant procedures of that RPO Party strictly provided that no Confidential Information is included in such thesis or is disclosed to the examiners without the prior written agreement of the Party to whom that Confidential Information relates (such procedures to include provisions to place the thesis on restricted access within the RPO's library for a period not less than the term of confidentiality imposed by this Agreement). The RPO Party shall procure that the student shall follow its regulations for the submission of the thesis for examination and, in any event, that the student submits to the Work Package Parties in question a draft thesis at least 60 days prior to the date for submission for examination and the final draft at least 30 days prior to the date for submission for examination..

11. CONFIDENTIALITY

- 11.1 **Confidentiality Obligations:** Each Receiving Party undertakes:

- (a) to maintain as secret and confidential all Confidential Information obtained directly or indirectly from the Disclosing Party in the course of or in anticipation of this Agreement and to respect the Disclosing Party's rights therein;
- (b) to use such Confidential Information only for the purposes of this Agreement;
- (c) to disclose such Confidential Information only to those of its Personnel, professional advisers, Affiliates and sub-licensees pursuant to this Agreement (if any) to whom and to the extent that such disclosure is reasonably necessary for the purposes of this Agreement;
- (d) to ensure that all those to whom disclosure of or access to such Confidential Information has been given, including its Personnel, professional advisers, Affiliates and sub-licensees, 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.

11.2 **Exceptions to Obligations:** The provisions of Clause 11 shall not apply to Confidential Information which the Receiving Party can demonstrate by reasonable, written evidence:

- (a) 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
- (b) 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
- (c) 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
- (d) is or becomes generally available to the public through no act or default of the Receiving Party or its agents, Personnel, or Affiliates.

11.3 **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 statutory or regulatory obligations it may do so, provided that, before making such a disclosure the Receiving Party shall, unless it is prohibited from so doing by law:

- (a) inform the Disclosing Party of the proposed disclosure as soon as possible, in any event, no later than five (5) business days after becoming aware of the proposed disclosure; and
- (b) cooperate with the Disclosing Party's reasonable, lawful efforts to resist, limit or delay such disclosure (at the cost and expense of the Disclosing Party).

Disclosure of any Confidential Information pursuant to any such order or requirement shall not be deemed to render it non-confidential and the Receiving Party's obligations with respect to such Confidential Information shall not be changed or lessened by virtue of any such disclosure, unless such disclosure results in one or more of the exceptions listed in Clause 11 above applying to that Confidential Information.

- 11.4 **[FOIA:** The Industry Parties acknowledge and agree that the RPO Parties may be subject to FOIA and the codes of practice issued under FOIA as may be amended, updated or replaced from time to time. The RPO Parties agree that all requests under FOIA relating to this Agreement and any other relevant records will be processed by the RPO Party under the terms of FOIA. The RPO Parties and the other relevant Parties shall communicate and cooperate in relation to the processing of any requests under FOIA.]⁸
- 11.5 **Return of Confidential Information:** The Receiving Party shall return to the Disclosing Party on demand all the Confidential Information which has been supplied to or acquired by the Receiving Parties, including all copies thereof and to delete all information stored in a machine readable form to the extent practically possible. The Receiving Parties may keep a copy to the extent it is required to keep archive or store such Confidential Information for compliance with applicable laws and regulations, or for proof of on-going obligations provided that the Receiving Parties comply with the confidentiality obligations herein contained with respect to such
- 11.6 **Notice of Breach:** Each Party shall give notice to each of the other Party of any unauthorised use, disclosure, theft or other loss of that other Party's Confidential Information as soon as is practicable after becoming aware of it.
- 11.7 **Duration of Obligations:** The obligations of confidentiality and non-use set out in this Clause 11 shall survive termination of this Agreement for any reason for a period of [five] years from the date of termination.

12. LIABILITY AND INSURANCE

- 12.1 **Own Risk:** Each Party undertakes to perform its part of the Project and any Work Package at its own risk.
- 12.2 **Indemnity:** Each Party (an "**Indemnifying Party**") shall indemnify and keep indemnified each of the other Parties (each an "**Indemnified Party**") from and against any and all liabilities, losses, judgments, awards, penalties, fines, costs or expenses (including legal fees) (each a "**Loss**" and together "**Losses**") suffered by any such Indemnified Party in respect of any claims made by the Funding Body, as a consequence of any failure by the Indemnifying Party to perform the whole or part of its obligations under its Grant Agreement or this Agreement.

⁸ Comment: Only relevant for inclusion where there are RPO Parties.

- 12.3 **Exclusion of Certain Losses:** Subject to Clause 12.5, and without prejudice to any indemnification provisions under this Agreement (including Clause 12.2), no Party shall be liable to any of the other Parties for any loss of profit, loss of revenue, or loss of contracts, loss of goodwill, loss of reputation, or any indirect or consequential Loss howsoever caused arising out of or in connection with the performance or non-performance (as the case may be) by that Party of its obligations under this Agreement regardless of whether such losses were in the contemplation of the Parties.
- 12.4 **Liability for subcontractors:** Each Party shall remain solely and wholly responsible for the performance of any of its obligations under this Agreement and under its Grant Agreement by any subcontractor, and shall ensure that any such subcontracts ensure the Party is in a position to comply with all its obligations under this Agreement and its Grant Agreement.
- 12.5 **Certain Liabilities not Excluded:** Nothing in this Agreement limits or excludes any Party's liability for
- (a) death or personal injury resulting from that Party's negligence or wilful misconduct (or that of its Personnel);
 - (b) fraud or fraudulent misrepresentation by that Party or its Personnel; or
 - (c) any sort of liability that, by law, cannot be limited or excluded.
- 12.6 **Limit:** Subject always to the provisions of Clause 12.5 above, the liability of each Party shall be limited as follows:
- (a) the total liability of each Party for any wilful misuse by that Party (or its Personnel) of the Confidential Information or IP of any other Party shall be limited to the sum of €[1,000,000] (in aggregate);
 - (b) the liability of each Party to in respect of any Losses incurred by any of the other Parties under a Grant Agreement as a result of that first party's breach of this Agreement shall be limited to the Project Funding made available by the Funding Body under the affected Grant Agreement;; and
 - (c) save as provided in Clauses 12.6(a) and 12.6(b), the total liability of each Party to any or all of the other Parties shall in all other cases be limited to the Project Funds received by that first Party under its own Grant Agreement. .
- 12.7 **Insurances:** Each Party undertakes:
- (a) to effect and maintain adequate insurance to cover its participation in the Project;
 - (b) to provide the Consortium Project Manager with a certificate of currency of its relevant insurance policies prior to the Commencement Date, and annually within 14 days of the insurance renewal.

13. WITHDRAWAL OR EXPULSION OF PARTY

- 13.1 **Withdrawal:** A Party may withdraw from the Project by giving [●] days' prior written notice to each of the other Parties. Any such withdrawal shall be subject to such conditions as the [Project Board]⁹ may decide and terms not being inconsistent with any of the Grant Agreements or this Agreement.
- 13.2 **Expulsion:** A Party (the “**Defaulting Party**”) may be expelled from the Project by a unanimous resolution of all Parties entitled to vote, provided Due Cause (as defined below) has arisen with respect to the Defaulting Party and remains unremedied 15 Business Days (or such longer period as may be allowed by the Parties) after written notice of same has been received by the Defaulting Party from the Consortium Project Manager. Any such resolution and any such terms shall be subject to the prior written approval of the Funding Body and consistent with the terms of each Grant Agreement.
- 13.3 **Due Cause:** For the purposes of Clause 13.2, the term “**Due Cause**” means:
- (a) any act or omission on behalf of the Party which constitutes a Material Breach under the relevant Grant Agreement;
 - (b) becoming insolvent, bankrupt or being subject to the appointment of a mortgagee, a receiver or examiner, or making any arrangement or composition for the benefit of creditors other than in the ordinary course of business, or being the subject of winding up proceedings, or passing a resolution for its winding up;
 - (c) disposal of whole or a material part of the Party's assets, operations or business other than in the ordinary course of business.
- 13.4 **Additional Consequences:** In addition to such conditions which may be specified pursuant to Clause 13.1 in respect of a withdrawing Party or Clause 13.2 in respect of an expelled Party, the following provisions shall apply to a withdrawing or expelled Party:
- (a) it shall no longer be a party to this Agreement, save that such withdrawal or expulsion shall not relieve the withdrawing or expelled Party of the obligations imposed upon it under the following provisions, which shall continue to be fully binding and enforceable against it:
 - (i) Clause 6 (*accounts and records*);
 - (ii) Clause 7.1 and Clause 7.2 (*ownership and access to equipment*);
 - (iii) Clause 12 (*liability & insurance*);

⁹ Comment: If the governing structure does not provide for a Project Board, the name of the relevant Committee per Schedule 3 should be inserted here instead.

- (iv) Clause 13.6 (*obligation on industry parties to make cash contributions*);
 - (v) Clause 14 (*effects of termination*); and
 - (vi) Clauses 16 (*general*); and
- (b) its rights under Clause 9.5 (*licence to background for commercialisation*) and 9.9 (*commercialisation of foreground IP*) shall lapse and cease to be exercisable.

13.5 Continuing Obligations: The withdrawal or expulsion of any Party from the Project:

- (a) shall not extinguish or otherwise affect the enforceability of any obligations of the withdrawing or expelled Party, or rights against the withdrawing or expelled Party which:
 - (i) accrued prior to the date of expulsion or withdrawal; or
 - (ii) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this Agreement which arose prior to the date of expulsion or withdrawal; and
- (b) shall not relieve the remaining Parties of their obligations under this Agreement and/or any relevant Grant Agreement, and they shall continue to carry on the Project and perform the terms of this Agreement and the relevant Grant Agreement(s) between them.

13.6 Obligations in respect of Contributions: The Parties agrees and acknowledges that, in the event that a Party withdraws or is expelled from the Project at any time during the Term, for whatever reason, such Party shall continue to be legally obliged to make:

- (a) any Contributions which were due by it prior to the date of its withdrawal or expulsion; and
- (b) a proportion of the Contribution that was due to be paid by it (if any) after the date of withdrawal or expulsion reflecting work carried out by any the Parties prior to the date of withdrawal or expulsion and a proportion of any non-cancellable commitments entered into by the Parties to be funded by the Contributions including a proportionate contribution to any redundancy costs that a Party may incur with respect to personnel employed for the purposes of the Project and funded from the Contributions.

14. EFFECTS OF TERMINATION

- 14.1 Accrued Rights:** Termination or expiry of this Agreement for whatever reason shall not extinguish or otherwise affect the enforceability of any obligations of any Party against any other Party, or rights against any Party which:

- (a) accrued prior to the date of termination or expiry; or
- (b) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this Agreement which arose prior to the date of termination or expiry.

14.2 **Agreement on Certain Matters:** Prior to termination or expiry of this Agreement for whatever reason, or as soon as possible after that time, the Parties shall meet for the purpose of agreeing on:

- (a) future Commercialisation of Foreground IP and any necessary Background;
- (b) any change to the Parties' future obligations of secrecy with respect to Confidential Information and future obligations of insurance; and
- (c) any other matter not addressed in this Agreement but requiring resolution at that point in time.

14.3 **Failure to Agree:** Failing agreement on any of the matters specified at Clause 14.2, such matters shall be resolved in accordance with Clause 15 (*dispute resolution*).

14.4 **Continuing Obligations:** Unless agreed otherwise under Clause 14.2 and save as provided in Clause 13.4 (*additional consequences*), termination or expiry of this Agreement for whatever reason shall not relieve the Parties of the obligations imposed upon them under the following provisions (or extinguish or affect the enforceability of any corresponding right of any other Party thereunder), which (to the extent that these apply to each of the Parties) shall continue to be binding and enforceable against each Parties:

- (a) Clause 6 (*accounts and records*);
- (b) Clause 7.1 (*ownership and access to equipment*);
- (c) Clause 9.5 (*licence to background for commercialisation*);
- (d) Clause 9.9 (*commercialisation of foreground IP*);
- (e) Clause 12 (*liability and insurance*);
- (f) Clause 13 (*provisions which apply on withdrawal or expulsion*);
- (g) this Clause 14; and
- (h) Clauses 16 (*general*);

and each Party shall continue to be bound by any continuing obligations imposed on them under their respective Grant Agreements, and shall do all things necessary to ensure the Parties are in a position to comply with their obligations under the continuing obligations under their respective Grant Agreements.

15. DISPUTE RESOLUTION

- 15.1 **Internal Escalation:** The Parties shall make every reasonable effort to resolve all issues fairly by negotiation. All disputes which arise between the Parties in connection with this Agreement shall be discussed initially between representatives of each of the Parties to the dispute. If the dispute remains it shall be referred to the [Project Board] in an attempt to resolve the issue in good faith.
- 15.2 **Mediation:** In the event that the dispute has not been settled within 60 days, it shall be submitted for mediation by a mediator or other appropriate independent third party expert agreed by the Parties or, in default of agreement, appointed by the chairperson of the time being of the council of the Irish Commercial Mediation Association (or in the event of his/her being unwilling or unable to act, the next most senior officer). The cost of any such mediator or expert shall be borne equally by the Parties.
- 15.3 **Injunctive relief:** For the avoidance of doubt, however, nothing in this Clause 15 shall prevent or delay a Party from applying to a court of competent jurisdiction for the purposes of seeking injunctive relief provided that there is no delay in the prosecution of that application.

16. DATA PROTECTION

While it is not intended that the performance of the Project will involve the processing personal data (as defined in Data Protection Law) by any Party on behalf of the other, each Party shall comply with its obligations as data controller under Data Protection Law in relation to any personal data processed by it under this Agreement. To the extent that any variation of the Project or Work Package will involve the processing of personal data by any Party on behalf of another, the relevant Parties shall enter into a data processing agreement in compliance with Data Protection Law

17. GENERAL

- 17.1 **Force majeure:** A Party shall not have any liability or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement (except payment obligations) that result from any Force Majeure Event. The Party affected by a Force Majeure Event shall promptly notify the other Parties in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If a Party is prevented from performing a material obligation under this Agreement by any Force Majeure Event for a continuous period of [90 days] or more, then the other Parties may agree by mutual consent to terminate this Agreement with immediate effect by giving notice in writing. No Party shall be liable to the other Parties for such termination.
- 17.2 **Sub-contracting:** Save as provided for in the Project Plan in Schedule 2, no Party may assign or transfer this Agreement and/or any of its rights under this Agreement to any third party; or sub-contract any part of the performance of its obligations under the Agreement except with the written authorisation of the other Parties and in accordance

with the relevant Grant Agreement. Where such authorisation is given (or provision made in Schedule 2) the relevant Party shall be responsible for all acts and omissions of any sub-contractor and for such sub-contractor's compliance with the provisions of this Agreement.

- 17.3 **Amendments:** This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.
- 17.4 **Independent contractors:** The relationship of the Parties shall be that of independent contractors. This Agreement is not intended to, and does not, create any contract of employment or other legal relationship between the Parties.
- 17.5 **Assignment:** No Party may assign, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement except to its Affiliates without the prior written agreement of the other Parties.
- 17.6 **Standard form documents:** The Parties recognise that printed form purchase orders, invoices and other commonly used form documents relating to the performance of any obligations under this Agreement may contain terms which conflict with one or more terms of this Agreement. In case of any such conflict, the relevant terms of this Agreement shall prevail.
- 17.7 **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.
- 17.8 **Notices:** Any notice to be given under this Agreement must be in writing, may be delivered to the other Parties by any of the methods set out in the left hand column below, and shall be deemed to be received on the corresponding day set out in the right hand column:

| Method of service | Deemed day of receipt |
|--------------------|---------------------------------------|
| By hand or courier | the day of delivery |
| By registered post | the second Business Day after posting |

- 17.9 **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.
- 17.10 **Severability:** If the whole or any part of a provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that shall not affect the legality, validity or enforceability under the law of that jurisdiction of the remainder of the provision in question or any other provision of this Agreement and

the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

17.11 **Costs:** Each Party shall pay its own costs in connection with or incidental to the preparation, negotiation and execution of this Agreement.

17.12 **Export and Import Control:**

(a) Any Party making available Restricted Materials for use in connection with the Project shall inform the other Parties if Export Control Rules apply to their use of the Restricted Materials.

(b) Subject to the foregoing, each Party shall adhere to, and reasonably assist each other with adhering to, Export Control Rules and shall not export, re-export, resell, transfer, or disclose, directly or indirectly, any Restricted Materials to any proscribed person, entity, or country, or foreign national thereof, unless properly authorised in accordance with Export Control Rules.

(c) Any Party exporting Restricted Materials shall be solely responsible for obtaining any applicable licences and authorisations.

17.13 **Counterparts and Signatures:** This Agreement may be executed in counterparts all of which taken together shall constitute one single agreement between the Parties. Transmission of an executed counterpart of this Agreement by fax or e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each Party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

17.14 **Announcements:** No 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 Parties in connection with or in consequence of this Agreement, without the prior written consent of the other Parties.

17.15 **Further Assurance:** Each Party undertakes to take any action and execute any document reasonably required by the Funding Body and/ or the Parties to give effect to the terms of this Agreement and/or each Grant Agreement, including the negotiation and execution of agreements to fully set out all issues relating to the management and operation of the Project and the management, protection, ownership and Commercialisation of Foreground IP.

17.16 **Law and jurisdiction:** This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of Ireland and each Party agrees to submit to the exclusive jurisdiction of the courts of Ireland.

17.17 **Waiver:** If any Party fails to enforce, or delays in enforcing, an obligation of another Party, or fails to exercise, or delays in exercising, a right under this Agreement, that

failure or delay shall not affect its right to enforce that obligation or constitute a waiver of that right, nor shall any single or partial enforcement or exercise of any obligation or right prevent any further or other enforcement or exercise thereof. Any waiver of any provision of this Agreement shall not, unless expressly stated to the contrary, constitute a waiver of that provision on a future occasion.

Agreed by the Parties through their authorised signatories:

SCHEDULE 1

THE PARTIES¹⁰

PART A- INDUSTRY PARTIES

| Name | Address | Contact |
|-------------|----------------|----------------|
| | | |
| | | |
| | | |
| | | |

PART B- RPO PARTIES

| Name | Address | Contact |
|-------------|----------------|----------------|
| | | |
| | | |
| | | |
| | | |

PART C- OTHER PARTIES

| Name | Address | Contact |
|-------------|----------------|----------------|
| | | |
| | | |
| | | |
| | | |

¹⁰ Comment: To be completed as appropriate.

SCHEDULE 2
PROJECT PLAN AND INDIVIDUAL WORK PACKAGES

[include details of:

1. the overall Project: title and brief description
2. the Lead Partner
3. the Consortium Project Manager
4. the Project Representatives and their parent organisation
5. individual Work Packages – list each one including
 - (a) title and brief description
 - (b) which party or parties will carry them out
 - (c) names and roles of Work Package Leaders for each Work Package
 - (d) duration
 - (e) location
 - (f) cash contributions by each party (parties)]

SCHEDULE 3

GOVERNING STRUCTURE AND COMMITTEES AND THEIR OPERATIONS

[Committee composition and functions should be detailed, along with how they report to each other (“Reporting Roles”).

By way of good practice example, the remit of an over-arching Project Board is included.

It is suggested that a Committee to review dissemination and commercialisation be included.]

1. **[Project Board**

1.1 **Composition:**

(a) The Project Board shall be comprised as follows:

- (i) [one] representative of each Party;
- (ii) a chairperson, who may be nominated from within membership of that Committee or may be an independent chairperson (the “Chairperson”); and
- (iii) such other persons as deemed appropriate by that Committee and agreed with the [Project Representatives].

1.2 **Functions:** The Project Board shall act as the ultimate decision making body of the Project and its responsibilities shall include:

- (a) monitoring the development of the Project periodically and making decisions on any action required to improve any aspect of the Project’s performance;
- (b) overseeing and managing any conflict (or potential conflict of interest) that may arise between the Project any Committee and the Parties;
- (c) approving the admission of new members;
- (d) identifying a breach by a Party of its obligations under this Agreement or the relevant Grant Agreement;
- (e) declaring a Party to be a Defaulting Party and determining remedies to be performed by a Defaulting Party;
- (f) termination of a Defaulting Party’s participation in the Project and measures relating thereto;
- (g) making any proposal to the Funding Body for a change of the Lead Partner;

- (h) making any proposal to the Funding Body for suspension of all or part of the Project;
- (i) making any proposal to the Funding Body for termination of the Project and this Agreement;
- (j) supporting the Consortium Project Manager in preparing meetings with the Funding Body and in preparing related data and deliverables;
- (k) preparing the content and timing of press releases and joint publications by the Parties or proposed by the Funding Body in relation to the Project; and
- (l) collecting information at least every 6 months on the progress of the Project.]

2. Consortium Project Manager

2.1 **Other Duties:** In addition to the responsibilities set out in Clause 4.2 (*consortium project management*), the Consortium Project Manager shall have the following responsibilities.

- (a) [●];
- (b) [●]

3. Project Representative

3.1 The Project Representative shall have the following responsibilities:

- (a) [●];
- (b) [●]

4. Reporting Roles

4.1 [●]

SCHEDULE 4

BACKGROUND TO BE INTRODUCED TO THE PROJECT

| Owning Party | Description of Background including any IP filing details | Category (A or B) | Any restrictions or encumbrances |
|--------------|---|-------------------|----------------------------------|
| | | | |
| | | | |
| | | | |
| | | | |
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| | | | |

SCHEDULE 5

NATIONAL MODEL AGREEMENTS

Template Agreements are available on the Knowledge transfer Ireland website at <http://www.knowledgetransferireland.com/Model-Agreements/Catalogue-of-Model-Agreements/>

These include:

Model Joint Ownership and Management Agreement

Model Licence Agreement – Exclusive

Model Licence Agreement - Non-Exclusive

Model Non-Exclusive Software Licence Agreement (Fee Bearing, No Royalties)

Model Non-Exclusive Software Licence Agreement (Fee Bearing and Royalties)

Model Exclusive Software Licence Agreement

Model End User Software Licence Agreement – Signature Version

A template Innovation Disclosure Form is also available at <http://www.knowledgetransferireland.com/Model-Agreements/Catalogue-of-Model-Agreements/>

Invention/IP Disclosure Form Template

SCHEDULE 6
LIST OF GRANT AGREEMENTS

EXECUTION PAGE¹¹

SIGNED for and on behalf of

[●]

By: _____

Name: _____

Title: _____

Date: _____

SIGNED for and on behalf of

[●]

By: _____

Name: _____

Title: _____

Date: _____

¹¹ Comment: Amend and add signature blocks as required.