KTI
Knowledge Transfer Ireland
Where Research & Business Connect

Companion Guide
to the KTI Practical Guide to Spin-Out Company Agreements

Introduction

The KTI Practical Guide and the Companion Guide have been produced as resources for those approaching transactions between Irish research performing organisations (RPOs)[1] and commercial companies. Common terms encountered in agreements and the considerations that might apply are described. The KTI Model Agreements take account of the legal constraints upon RPOs when entering into contracts, as well as the unique nature of RPOs, whose primary purpose is not-for-profit rather than commercial. At the same time, the terms of the agreements seek to address the typical commercial priorities of companies. The Guides are based on European best practice. The Guides are offered as a starting point for drafting and discussion, as required. Neither companies nor RPOs are mandated to use the Model Agreements.

This Companion Guide to the KTI Practical Guide to Spin-out Company Agreements contains the suite of agreements associated with spin-out company formation. They are directed at early stage company formation. These Model Agreements each contain drafting notes that aid consideration of the issues.

A copy of each of the agreements, without drafting notes, ready to download in Word format is available on the KTI website.

The agreements in this Companion Guide are:

Disclaimer

Parties should take their own legal advice on the suitability of any model agreement for their individual circumstances and on associated legal and commercial issues. Neither Knowledge Transfer Ireland, Enterprise Ireland nor any of the individuals or organisations who have produced or commented on these documents assumes any legal responsibility or liability to any user of any of these model agreements or commentaries.

1 RPOs are considered to be Higher Education Institutes (Universities and Institutes of Technology) or State research organisations

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KTI Model Term Sheet for a Subscription and Shareholders' Agreement – early stage company

STRICTLY PRIVATE AND CONFIDENTIAL

NOT TO BE DISCLOSED OR CIRCULATED TO THIRD PARTIES

Dated ____________________________________20[●]

(1) [*Full legal name of the Company*]

and

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

and

(3) [*Full legal names of each of the other parties*]

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

STRICTLY PRIVATE AND CONFIDENTIAL - NOT TO BE DISCLOSED OR CIRCULATED TO THIRD PARTIES

NON-BINDING TERM SHEET FOR A SUBSCRIPTION AND SHAREHOLDERS' AGREEMENT[1] IN RESPECT OF [●][2], AN EARLY STAGE SPIN-OUT COMPANY[3]

This Non-Binding Term Sheet dated[4] ____________________________________ 20[●] is between:

(1) [●] Limited (the "**Company**"), a private company limited by shares registered in Ireland under Part 2 of the Companies Act 2014 under company registration number [●], whose registered address is at [●][5]; and

(2) [●] (the "**RPO**"), an academic institution [incorporated *or* established] under [statute *or* charter in Ireland], whose [principal address *or* registered office] is at [●][6]; and

(3) [●], an individual, whose residential address is at [●][7]; and

(4) [●], an individual, whose residential address is at [●][8].

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

1 Purpose

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

2 Provisions envisaged for the Shareholders' Agreement

The Parties intend that the Shareholders' Agreement would contain terms based on the following principles[9]:

Completion Date	Subject to the Conditions being satisfied or waived by the relevant Parties, the Shareholders' Agreement would come into effect on [●][10].
Conditions	Completion of the Shareholders' Agreement would be conditional upon the conditions set out in Schedule 1 being satisfied before the Completion Date.
Shareholding immediately prior to Completion	The Company would warrant that, immediately prior to the Completion Date, the total issued share capital of the Company would be as set out in Part A of Schedule 2.
Subscription for shares	On the Completion Date, [●][11] would subscribe and pay for new shares of €[●] each in the Company in the following amount[s] and for the following subscription price[s]: • [●]: [●] shares for a total subscription price of €[●]; and • [●]: [●] shares for a total subscription price of €[●]; and • The RPO: [●] shares for a total subscription price of €[●]. The Parties would take such action as may be necessary to give effect to such subscription[s].

Shareholding immediately following Completion	The Company would warrant that, immediately following the Completion Date, the total issued share capital of the Company would be as set out in Part B of Schedule 2.
Other warranties	[●][12] would be required to give the warranties set out in Schedule 3 about the Company as of the Completion Date.
No dilution of the RPO[13]	The percentage shareholding in the Company owned by the RPO immediately following the Completion Date would be maintained and protected from any dilution until such time as the Company has received more than €[●] in aggregate by way of subscription for shares in its share capital. If, in order to maintain and protect the RPO's shareholding, the Company would be required to issue further shares to the RPO, the RPO would not be required to pay more than the nominal value (of €[●] per share) for such shares.
Qualifying Shareholders	Any shareholder who owned at least [●][14] percent of the total issued share capital of the Company would be classified as a "Qualifying Shareholder" in the Shareholders' Agreement. None of the matters set out in Schedule 4 would be validly agreed or undertaken without the prior consent of all Qualifying Shareholders.
RPO's right to appoint a director, etc.[15]	For as long as the RPO was a Qualifying Shareholder, the RPO would be entitled to appoint a director of the Company. In addition, and irrespective of whether the RPO had appointed a director, the RPO would be entitled to appoint an observer of the board of directors of the Company. Any director and/or observer appointed by the RPO would be at liberty to make full disclosure of any information relating to the Company to the RPO, its affiliates and their respective officers, employees, other personnel and advisors. The RPO would be responsible for ensuring that appropriate confidentiality arrangements were put in place with any persons who would have access to such information of the Company.
The Board	Immediately following the Completion Date, the following individuals would comprise the board of directors of the Company: [●][16].
The role of the Board	The board would have responsibility for the supervision and management of the Company, subject to the rights of the Qualifying Shareholders.
Remuneration	Unless otherwise agreed (in the manner to be set out in the Shareholders' Agreement), no director would be remunerated by the Company for their attendance at board meetings or for any other activities the director may perform in his/her capacity as such.
Quorum	The quorum for board meetings would be [●][17] directors.
Board meetings[18]	The Company would ensure that board meetings would be convened at least [●] times a year by written notice (specifying at least the date, time and place of the meeting) to be sent to all directors of the Company and any observer appointed by the RPO not later than [●] days before the meeting. The Company would also ensure that every notice would be accompanied by a

	written agenda specifying the matters to be raised at the meeting, together with copies of all papers to be laid before the meeting.
[The Founders]	[It is envisaged that the Company would enter into a separate service agreement with [each of] [●][19] in order to set out the arrangements for his/her role as [●] of the Company.]
Restrictive covenants[20]	[●] would be required to give assurances to the other Parties that, whilst he/she was a Qualifying Shareholder and for [twelve (12)] months thereafter, he/she would not (in general terms): • compete with the Company; • "poach" the Company's staff or customers; or • negatively interfere with the Company's business arrangements or negotiations.

3 Areas still to be discussed

The Parties envisage that the Shareholders' Agreement may also include other terms, which may include, without limitation, [●][21].

4 Confidentiality[22]

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

(a) use the Confidential Information only for the purpose of negotiating the Shareholders' Agreement and not for any other purpose; and

(b) keep the Confidential Information confidential and not directly or indirectly disclose it or make it available to any third party.

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

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

5 Law and status of this Term Sheet

Except for the provisions of Clauses 4, 5 and 6 which the Parties intend to be binding obligations, this Term Sheet is not intended to create, evidence or imply any legal relationship or contract between the Parties. Each Party acknowledges and agrees that (a) each Party may withdraw from the negotiation of the Shareholders' Agreement at any time without liability, and (b) the negotiations are being conducted on a non-exclusive basis, unless and to the extent otherwise stated in this Term Sheet[23]. To the extent that any legal issue arises in connection with this Term Sheet, it will be governed and construed in accordance with the laws of Ireland.

6 Costs

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

7 Independent Legal Advice

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

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

For and on behalf of	For and on behalf of
[*Full legal name of the Company*]	[*Full legal name of the RPO*]
______________________	______________________
Signed	Signed
______________________	______________________
Name	Name
______________________	______________________
Title	Title
______________________	______________________
Date	Date
For and on behalf of	For and on behalf of
[*Full legal name of the other Party*]	[*Full legal name of the other Party*]
______________________	______________________
Signed	Signed
______________________	______________________
Name	Name
______________________	______________________
Title	Title
______________________	______________________
Date	Date

Schedule 1

Conditions for Completion[25]

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

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

Schedule 2

Shareholding in the Company[26]

Part A: Immediately prior to the Completion Date:

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

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

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

Part B: Immediately following the Completion Date:

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

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

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

Schedule 3

Warranties[27]

The Company:

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

Schedule 4

Matters requiring consent by the Qualifying Shareholders[28]

(a) [any alteration to the Company's constitution;

(b) any change to the issued share or loan capital of the Company, or any grant of any option or other right to subscribe for any share or loan capital of the Company, or any issue of securities convertible into such share or loan capital;

(c) any alteration of any right attached to any share in the Company, or any creation of any new equity interest in the Company;

(d) any resolution or petition for the winding up, administration or examinership of the Company (or any analogous event);

(e) subject to the RPO's right to appoint a director, the appointment of any person to be a director of the Company, or the remuneration in excess of €[●] or granting of any pension rights to any director of the Company, or the entering into or making of any material change to any contract of employment with any director or senior manager of the Company;

(f) the entering into of any contract of employment or for the provision of services to the Company which cannot be terminated on less than [●] months' notice, without payment of compensation;

(g) the granting to any person (other than a director of the Company) of authority to act on behalf of the Company;

(h) any acquisition, whether by formation or otherwise, by the Company of any subsidiary, or any disposal or dilution of the Company's interest in any subsidiary;

(i) any Asset Sale or Share Sale (both terms to be defined in the Shareholders' Agreement);

(j) any disposal of shares in the capital of the Company amounting to an IPO (to be defined in the Shareholders' Agreement);

(k) any borrowing by the Company of any sums in excess of €[●] at any time;

(l) any undertaking by the Company in any financial year of any single item or series of items of capital expenditure involving an aggregate liability in excess of €[●];

(m) the making by the Company of any loan, or the giving of any advance or other credit (other than credit given in the normal course of the Company's business), in excess of €[●] to any person except for the purpose of making deposits with the Company's bankers;

(n) the giving by Company of any guarantee, bond or indemnity in respect of or to secure the liabilities or obligations of any person;

(o) the creation or issue of any debenture, mortgage, charge or other security over any assets of the Company (except for the purpose of securing sums borrowed by the Company from its bankers in the ordinary and usual course of business);

(p) any acquisition by the Company of any share or loan capital of any body corporate (including that of the Company or any subsidiary) or the entering into any partnership or profit sharing arrangement by the Company with any person;

(q) any declaration or payment of any dividend or other distribution in respect of any share capital of the Company;

(r) the entering into by the Company, or the making of any material change to, any contract or transaction with any person except on normal arm's length commercial terms;

(s) the entering into by the Company of any agency or distribution agreement which is expressed to contain any element of exclusivity as regards any products or services dealt in or as to the area of the agreement;

(t) the entering into of any licence or other similar agreement relating to intellectual property to be licensed to or by the Company which is otherwise than in the ordinary course of business;

(u) the introduction by the Company of any executive or employee share option or profit sharing or bonus scheme of any nature, and the identity of any executive or employee who will benefit from any such scheme;

(v) the engagement by the Company of any employee at a salary in excess of €[●] per annum, increase remuneration of an employee to a salary in excess of €[●] per annum or dismiss any employee with a salary in excess €[●] per annum; and

(w) the entering into of any agreement for consultancy or management services which will, or is likely to, result in the Company being managed otherwise than by its directors, or which involves a consideration exceeding €[●] per annum.]

Drafting Notes

[1] This term sheet is intended as a document in which the parties can record their initial, shared assumptions about the provisions of a proposed subscription and shareholders' agreement that is under negotiation in relation to a spin-out company. These terms will not be binding. However, the term sheet can also include binding terms about exclusivity and confidentiality that will apply during the period of the negotiations (and subsequently, in the case of the confidentiality provisions). It may be helpful to also read the "KTI Practical Guide to Term Sheets for Licence Agreements".

[2] Insert the full name of the spin-out company here (and also on the covering page).

[3] Users of this template should note that the authors have not drafted it to take account of any individual requirements of Irish third-level educational institutions which might apply. Users are advised to seek out and address by additional provisions any peculiarities or requirements of a relevant institution.

[4] This should be the date on which the last party signs and should be inserted by the last signatory on that date (and also on the covering page). Where the term sheet is being circulated and signed in counterpart, this date should be confirmed with the company before it is written in to ensure that the correct date is inserted.

[5] Insert (here and also on the covering page) the full name of the spin-out company. The spin-out company's registered number and registered address also need to be inserted here. This wording assumes that the spin-out company will be a limited company (registered under Part 2 of the Companies Act 2014).

[6] Insert (here and also on the covering page) the full name of the RPO. The statute or charter under which the RPO was incorporated or established, and its registered/principal address also need to be inserted here. Individual RPOs will have their own legal formalities which will need to be completed to bind the RPO.

[7] Insert (here and also on the covering page) the full name of each of the individual founders. Their residential addresses also need to be specified here. If there will be more than two founders, additional lines should be added so that each of the founders is described separately. However, if there will be only one founder, the placeholder wording for the fourth party should be deleted.

The founders may be the academics at the RPO who developed the intellectual property to be commercialised by the spin-out company and/or may be an independent business person (if any has been found to assist with the running of the company). Only individuals who already own shares in the spin-out company, or who will be receiving shares under the proposed subscription and shareholders' agreement, should be listed here.

[8] Please see above comment.

[9] Outline here the main provisions proposed for the subscription and shareholders' agreement as negotiated so far. This clause is at the heart of the term sheet.

[10] Insert the date on which the parties intend the subscription and shareholders' agreement to come into effect. Please note that the pre-completion conditions set out in Schedule 1 will need to be satisfied by this date.

[11] Insert here the names of the party or parties who would receive shares under the subscription and shareholders' agreement. Insert here also the nominal value of those shares, the number of shares each of them would receive and the price that would be paid for the shares. The price may be the nominal or par value of the shares, if no party would be making an "investment" in return for shares.

[12] The name of the party or parties who would give the warranties in Schedule 3 should be inserted here. It is likely that these parties would be the company and anyone who initially owns shares in the company – unless the RPO is one of these initial shareholders and it has a policy against giving warranties.

[13] The relevant percentage and price need to be inserted here. This wording aims to protect the RPO against dilution of its shareholding until the spin-out company has raised a certain minimum amount of investment. It is drafted simply and describes the intended effect, rather than the mechanism that should be applied to achieve it. These types of clauses are sometimes described as "ratchets" and can require a page or more of drafting (including mathematical formulae) if set out in full.

[14] The relevant percentage needs to be inserted here. This wording would put all Qualifying Shareholders on an equal footing (e.g. by requiring all of them to agree unanimously in order for certain decisions to be taken, irrespective of the actual number of shares they each own). Careful thought should be given to this provision as to whether it is appropriate for the particular company in question and, if not, amended accordingly.

[15] This wording would give the RPO the right to appoint a director and/or an observer for as long as the RPO is a Qualifying Shareholder in the spin-out company, but it does not oblige the RPO to appoint either. If appointed, the wording also provides for the RPO's director and/or observer to share information learnt at board meetings with the RPO and certain others. This is usually an important provision for an RPO. Any individual appointed by the RPO as a director would owe fiduciary duties to the company and may not be entitled to share information with the RPO, the party that appointed them as a director, without an express right to do so.

[16] Insert the relevant names here.

[17] Insert the relevant number here. The quorum is the minimum number of directors that would need to attend board meetings in order for decisions to be validly taken at those meetings. The Companies Act 2014 provides that the default minimum is two directors. Accordingly, if this clause is going to vary this position, the Company's constitution should be amended to reflect the agreed number.

[18] There are blanks to be filled out here as appropriate.

[19] Insert the missing details here. It is recommended that service contracts (or employment contracts if appropriate) are put in place with all individuals who are to be appointed as directors of the company to set out the basis of their appointment, including a description of the role and level of commitment that is expected, how conflicts of interests should be handled, whether any payments are due to the director, the circumstances in which the director may be required to resign, intellectual property and confidentiality, post-appointment obligations, etc.

[20] This wording sets out a list of contractually enforceable (i.e. binding) promises and obligations that would be required to be given by the named individuals (e.g. the founding academics). These promises and obligations cover issues such as the individuals agreeing not to engage in activities that would compete with the company and not to "poach" the company's staff or clients. These promises and obligations are usually considered important when the spin-out company is in its early stages to give it the best chance of getting "off the ground".

[21] Mention here other terms to be included in the subscription and shareholders' agreement, such as confidentiality, termination, and law and jurisdiction provisions.

[22] Two alternative confidentiality clauses are suggested here. Delete whichever clause is not appropriate for the particular arrangements.

[23] Under the laws of some European countries, parties may have obligations of good faith to one another which may prevent a party from unilaterally withdrawing from negotiations without liability. In addition, under the laws of some European countries, it may also be implied that the negotiations will be held on an exclusive basis. The provisions of clause 5 attempt to address these points.

[24] Insert the names of any individuals that would sign the term sheet (and the subsequent subscription and shareholders' agreement) in a personal capacity (e.g. any founding academics).

[25] Insert here a list of any matters that would need to be addressed as part of the spin-out process before the subscription and shareholders' agreement could be signed, including any "corporate" actions that the existing shareholders would need to approve before the transaction could be completed.

[26] There are blanks that need to be filled out here to accurately record the shareholding position in the spin-out company immediately before and after the completion date.

[27] This is a relatively light set of warranties. The thinking behind this wording is that the party or parties that would be issued shares under the subscription and shareholders' agreement may want certain assurances about what may have happened to the company in the period between it being incorporated and the subscription and shareholders' agreement being signed. Given the early-stage of the company, and that the RPO may be one of the initial shareholders, the warranties are fairly light-touch. However, even though relatively light-touch, a party should not give warranties without carrying out the necessary due diligence.

[28] This list is an example of the types of matters that sometimes get left for Qualifying Shareholders to approve. The list can be tailored as appropriate for the particular spin-out company in question, if it is thought too extensive. If the list is deemed appropriate, the blanks need to be completed.

KTI Model Subscription and Shareholders' Agreement – early stage company

Dated ____20[●]

(1) [*Full legal name of the Company*]

and

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

and

(3) [*Full legal names of each of the Founders*]

MODEL SUBSCRIPTION AND SHAREHOLDERS' AGREEMENT IN RESPECT OF [●], AN EARLY STAGE SPIN-OUT COMPANY

SUBSCRIPTION AND SHAREHOLDERS' AGREEMENT IN RESPECT OF [●][1], AN EARLY STAGE SPIN-OUT COMPANY[2, 3]

THIS AGREEMENT[4] dated ____ 20[●][5] is between:

(1) [●] **Limited** (the "**Company**"), a private company limited by shares registered in Ireland under Part 2 of the Companies Act 2014 under company registration number [●], whose registered address is at [●][6];

(2) [●] (the "**RPO**"), an academic institution [incorporated *or* established] under [statute *or* charter in Ireland],] whose [principal address *or* registered office] is at [●][7];

(3) [●], an individual, whose residential address is at [●][8, 9]; and

(4) [●], an individual, whose residential address is at [●][10].

BACKGROUND

(A) Immediately prior to the Completion Date, the Company has a total issued share capital of [●] shares of €[●] each[11], all of which have been issued, are fully paid up and are beneficially owned by, and are registered in the name[s] of, the Initial Shareholder[s] [in the following amount[s]: [●]][12].

(B) The [Founders and the RPO][13, 14] now wish to subscribe for shares in the share capital of the Company, and the Founders and the RPO also now wish to regulate their affairs as shareholders in the Company, all in accordance with the provisions of this Agreement.

THE PARTIES AGREE as follows:

1 Definitions

1.1 *Definitions.* In this Agreement, unless the context otherwise requires, the following words shall have the following meanings:

Affiliate	In relation to a Party, means any person that Controls, is Controlled by, or is under common Control with that Party.
Agreement	This Shareholders' Agreement, together with its attached Schedules.
Asset Sale	The sale, transfer, lease, licence or other disposal of all or a material part of the Company's business, undertakings or assets, whether by a single transaction or a series of transactions related or not.
Board	The board of directors of the Company as constituted from time to time or the directors of the Company present at a duly convened meeting of the directors of the Company at which a quorum is present.
Business Plan	[The annual written business plan of the Company, which shall include at least the following information to be set out at a reasonable level of detail: (a) a summary of how business will be conducted by the Company; (b) the technical and commercial targets of the Company; (c) the projected dates for achieving such targets; (d) the activities taken, or planned to be taken, by the Company in order to achieve such targets; (e) the amount of any external investment required in order to achieve such targets and the strategy for securing such investment; (f) the budgeted amounts set out in the Company's accounts for achieving such targets; (g) a projected profit and loss account; (h) an operating budget (including estimated capital expenditure requirements) and a balance sheet forecast; (i) a review of the projected business; and (j) a summary of business objectives.][15]
Company Secretary [16]	Any person appointed from time to time by the Board to be the secretary of the Company.
Completion Date	[●][17].

Conditions	Has the meaning given in Clause 2.1.
Confidential Information	All technical, commercial and/or business information 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; and (b) in respect of information that is disclosed orally or visually, any information that the Disclosing Party or its representatives informed the Receiving Party at the time of disclosure was disclosed in confidence; and (c) any copy of any of the foregoing.
Constitution[18]	The constitution of the Company, as may be amended or superseded from time to time.
Control	Direct or indirect beneficial ownership of 50% (or, outside a Party's home territory, such lesser percentage as is the maximum permitted level of foreign investment) or more of the share capital, stock, or other participating interest carrying the right to vote or to distribution of profits of that Party, as the case may be.
Deed of Adherence[19]	A deed in the form set out in the attached Schedule 2 under which a person agrees to be bound by the terms of this Agreement.
Disclosing Party	Has the meaning given in Clause 6.1.
Founders	[●][20].
Initial Shareholder[s]	[●][21].
Insolvency Event[22]	[In respect of the Company, the occurrence of any of the following events: (a) the appointment of a liquidator, receiver, administrative receiver, administrator or examiner to the Company (or any analogous appointment being made in respect of the Company in any jurisdiction other than Ireland); (b) the unanimous passing by the Qualifying Shareholders of a resolution for a voluntary winding up of the Company, other than for the purpose of solvent amalgamation or reconstruction (or any analogous step being taken in respect of the Company in any jurisdiction other than Ireland); (c) the making of a winding up order in respect of the Company (or any analogous order being made in respect of the Company in any jurisdiction other than Ireland); or (d) the approval of a voluntary arrangement or similar form of composition with creditors in respect of the Company (or any analogous event occurring in respect of the Company in any jurisdiction other than Ireland).]
IPO	The successful application and admission of all or any of the shares in the capital of the Company, or securities representing such shares, to the Official List of the Irish Stock Exchange and/or to the Official List of the United Kingdom Listing Authority, the AIM Market operated by the London Stock Exchange plc, or the ESM operated by the Irish Stock Exchange, or the Nasdaq National Stock Market of the Nasdaq Stock Market Inc, or to any other recognised investment exchange as defined in the applicable Irish/EU law from time to time.
Offer	A *bona fide* written offer at arm's length and for market value to purchase the entire issued share capital of the Company for a price per share and on terms which do not differentiate between any holders of any share in any particular class (and for this purpose any such offer which provides consideration for a restrictive covenant or for warranties or indemnities to some but not all of the Shareholders shall be deemed so to differentiate).

Parties	The Company and the Shareholders; and "**Party**" shall mean any of them.
Potential Buyer	[Any person, other than the Initial Shareholder[s] or any person who becomes a Shareholder on the Completion Date.][23]
Purchaser	Any person or group of persons Acting in Concert, where "**Acting in Concert**" has the meaning given in the Irish Takeover Panel Act 1997 as amended.
Qualifying Shareholders[24]	All Shareholders who each own at least [●] percent of the total issued share capital of the Company; and "**Qualifying Shareholder**" shall mean any of them.
Receiving Party	Has the meaning given in Clause 6.1.
Sale	An Asset Sale or a Share Sale.
Shareholders	The RPO and the Founders, and any persons who become parties to this Agreement by virtue of executing a Deed of Adherence; and "**Shareholder**" shall mean any of them.
Share Sale	The sale of (or the grant of any right to acquire or to dispose of) any of the shares in the capital of the Company (in one transaction or a series of transactions) that results in the Purchaser of those shares acquiring the entire issued share capital of the Company.
Third Party	Any person other than a Party.
Warrantor[s]	[●][25].

2 Conditions

2.1 *Conditions.* This Agreement is conditional upon the conditions set out in this Clause 2.1 (together, the "**Conditions**") being satisfied before the Completion Date:

(a) The RPO being satisfied with the final form of the following documents:

(i) [*Insert here a list of any documents that the Parties intend will be entered into or finalised at the same time as this Agreement, e.g. any consultancy/service agreement*[26]*, licence agreement, initial business proposal, etc.*][27]; and

(b) The Initial Shareholder[s] passing shareholder resolutions to:

(i) [*Insert here a list of any "corporate" actions that need to be completed before this Agreement is entered into, e.g. changing the Constitution, increasing the authorised share capital (if the company has this), sub-dividing the share capital, giving authority to allot, dis-applying any pre-emption rights, etc.*][28]; and

(c) [*Insert any other Conditions that need to be satisfied before the Completion Date*][29].

2.2 *Completion*. Conditional upon all of the Conditions being satisfied (or waived in accordance with Clause 2.3) before the Completion Date, this Agreement shall come into effect on the Completion Date. For the avoidance of doubt, if all of the Conditions are not satisfied (or waived in accordance with Clause 2.3) before the Completion Date, this Agreement shall not come into effect and no Party shall have any obligation or liability to any other Party under this Agreement.

2.3 *Waiver*. Each of the RPO and the Initial Shareholder[s] may, in its sole discretion and to the extent it deems appropriate, waive the requirement to satisfy any one or more of the Conditions by giving written notice thereof to each of the other Parties prior to the Completion Date[30].

3 Completion

3.1 *Shareholding immediately prior to Completion Date.* The Company warrants that, immediately prior to the Completion Date the total issued share capital of the Company is [●] shares of €[●] each, all of which have been fully paid up and are beneficially owned by, and are registered in the name[s] of, the Initial Shareholder[s] [in the following amount[s]: [●]][31].

3.2 *Warranty*[32]. Each of the Warrantors warrants that, at the Completion Date, the Company:

(a) is duly incorporated and validly existing, has the power and authority to own assets, and has the capacity to enter into this Agreement;

(b) does not have any debts or other liabilities;

(c) is not involved in any legal proceedings and is not aware of any circumstances that may result in any claim being made against the Company;

(d) has not entered into any contracts or otherwise begun to trade;

(e) has ensured that all of its registers and books, and all of its filings with the Company Registration Office, are up-to-date, complete and accurate; and

(f) has not done anything that may damage the reputation or the good name of the RPO.

3.3 *Issue of new shares***.** The Company warrants that, on the Completion Date, the Company shall be entitled to allot the shares described in Clause 3.4 to [the Founders and the RPO][33] on the terms of this Agreement and without the consent of any other person.

3.4 *Completion*.

(a) The Parties agree that Completion shall take place at the offices of the RPO on the Completion Date.

(b) On the Completion Date, the Parties shall procure the completion of the following events:

(i) the RPO shall enter into the following agreement(s): [●][34];

(ii) [each of the Founders] shall enter into the following agreement(s): [●][35];

(iii) [each of the Founders and the RPO][36] shall subscribe for new shares of €[●] each in the Company in the following amounts and for the following subscription prices[37], payment for which shall be in accordance with Clause 3.4(b)(iv):

(A) [●]: [●] shares for a total subscription price of €[●];

(B) [●]: [●] shares for a total subscription price of €[●]; and

(C) the RPO: [●] shares for a total subscription price of €[●];

(iv) [the Founders and the RPO] shall pay the respective amounts set out in Clause 3.4(b)(iii) by electronic transfer to the Company's bank account at [●], with sort code [●], account number [●], BIC [●] and IBAN [●][38]; and

(v) a meeting of the Board shall be held at which the Company shall[39]:

(A) subject to the receipt of the payments referred to in Clause 3.4(b)(iv), issue [●] new shares of €[●] each in the Company to the Founders and the RPO in the amounts set out in Clause 3.4(b)(iii);

(B) authorise the execution of share certificates under seal in accordance with the Constitution to reflect the issue of shares referred to in Clause 3.4(b)(iii);

(C) [appoint [●] as the Company Secretary][40];

(D) [appoint [●] as a director of the Company[41]];

(E) approve the entering into of this Agreement and the following agreement(s) on behalf of the Company: [●];

(F) pass any other resolutions that may be required to carry out the Company's obligations under this Agreement; and

(G) instruct the Company Secretary to:

I. write up the Company's register of members, and issue and deliver share certificates to [the Founders and the RPO], to reflect the issue of shares referred to in Clause 3.4(b)(iii); and

II. file with the Company Registration Office all appropriate forms and documents[42], and pay to the Company Registration Office any associated fee(s), within the time limits prescribed by statute to reflect the issue of shares referred to in Clause 3.4(b)(iii) and the appointment of any officers (company secretary or directors) and any resolutions passed in accordance with this Clause 3.4.

4 Appointment of directors, etc.

4.1 *The Board.* The Parties agree that the Board shall have responsibility for the supervision and management of the Company, subject to Clause 5.4.

4.2 *Right of the RPO to appoint a director, etc[43].* For as long as the RPO is a Qualifying Shareholder:

(a) The RPO shall at all times be entitled (but not bound) to appoint and maintain in office such person as the RPO may from time to time nominate as a director of the Company (each, an "**RPO Director**"). The RPO shall at all times have the right to remove from office any RPO Director nominated by it and, upon his/her removal, to appoint and maintain in office another RPO Director in his/her place as and when the RPO deems appropriate in its sole and absolute discretion. For the avoidance of doubt, no RPO Director may be removed from office except with the prior written consent of the RPO.

(b) During any period when the RPO shall have an RPO Director in office, the RPO shall be entitled (but not bound) to appoint and maintain in office such person as it may from time to time nominate as an alternate director of the Company (the "**RPO Alternate**") to the RPO Director. The RPO shall at all times have the right to remove from office any RPO Alternate appointed by it and, upon his/her removal, to appoint and maintain in office another RPO Alternate in his/her place as and when the RPO deems appropriate in its sole and absolute discretion. For the avoidance of doubt, (i) no RPO Alternate may be removed from office except with the prior written consent of the RPO, and (ii) the presentation at a Board meeting of a letter signed by the RPO Director or any authorised representative of the RPO stating that the Alternate has been appointed as such shall be conclusive evidence that this is the case.

(c) In addition to the rights of the RPO under Clause 4.2(a) and Clause 4.2(b), and whether or not the RPO shall have exercised its right to appoint an RPO Director, the RPO shall at all times be entitled (but not bound) to appoint an observer of the Board (the "**RPO Observer**"), who may attend and speak, but not vote, at all Board meetings.

(d) Each RPO Director, RPO Alternate, and RPO Observer shall be at liberty from time to time to make full disclosure of any technical, commercial and/or business (including financial) information relating to the Company to the RPO, the RPO's Affiliates, and their respective officers, employees, other personnel and advisers (together, the "**RPO Organisations and Personnel**").

(e) The RPO acknowledges and agrees that it shall be responsible for ensuring that the provisions of Clause 6.4 are complied with in respect of any of the RPO Organisations and Personnel who have access to any such information of pursuant to Clause 4.2(d).

4.3 *Remuneration.* Unless otherwise agreed by the Board in writing (and, if Clause 5.4 applies, also agreed by all of the Qualifying Shareholders in accordance with that Clause), no director, alternate, or observer shall be remunerated by the Company for their attendance at Board meetings or at any meetings of any committees of the Board or for any other activities the director, alternate, or observer may perform in their capacity as such.

4.4 *Directors' insurance.* At the request of any Qualifying Shareholder or director of the Company at any time after the Company engages in any trading activity, the Company shall, at its own expense, take out and maintain directors' and officers' insurance (on reasonable commercial terms) in respect of liabilities that they may incur as a result of carrying out their duties to the Company.

5 Conduct of the Company

5.1 *Business Plans*[44]*.* For each year this Agreement is in force, the Company shall prepare and send to each Qualifying Shareholder a Business Plan in respect of the following financial year. Each Business Plan shall be sent to each Qualifying Shareholder not later than [●] in each year.

5.2 *Board meetings*[45]*.* Unless otherwise agreed by the Qualifying Shareholders in writing, and notwithstanding any provision of the Constitution, the Company shall ensure that:

(a) Board meetings shall be convened at least [●] times per year;

(b) each Board meeting shall be convened by written notice (specifying at least the date, time and place of such meeting) sent to all directors of the Company (or their alternates) and any RPO Observer appointed under Clause 4.2 not later than [●] days prior to the date of the meeting;

(c) every such notice shall be accompanied by a written agenda specifying the matters to be raised at the meeting together with copies of all papers to be laid before the meeting;

(d) no resolution relating to any business may be proposed or passed at any Board meeting unless the nature of the business is specified in the agenda for such meeting;

(e) the quorum at any meeting of the Board shall be [●] directors[46];

(f) no business shall be conducted at any meeting of the Board unless a quorum is present at the beginning of the meeting and at the time where there is to be voting on any business; and

(g) for the avoidance of doubt, if any director of the Company (or his/her/its alternate) does not attend a Board meeting and such meeting (i) has been duly convened and held in accordance with the provisions of this Agreement, and (ii) has a quorum as required by Clause 5.2(e) (in the absence of such director or alternate), then the meeting shall not be considered defective solely because of the absence of such director (or alternate) from such meeting[47].

5.3 *Financial accounting.* The Company shall:

(a) maintain accurate, complete and up-to-date accounting and other financial records in accordance with the requirements of all applicable laws and generally accepted accounting principles applicable in Ireland; and

(b) prepare and send to each Qualifying Shareholder:

(i) the annual reports and accounts of the Company (audited if required by applicable law) in respect of each accounting period within [●] months after the end of the accounting period to which such audited accounts relate;

(ii) quarterly management accounts and reports containing such information as each Qualifying Shareholder shall reasonably require within [●] days of the end of the quarter concerned; and

(iii) a detailed operating and capital budget and cash flow forecast in respect of the next financial year within [●] days before the end of each financial year.

5.4 *Shareholder voting*[48]*.*

(a) Notwithstanding any provision of the Constitution, the Shareholders agree that none of the matters set out in Schedule 1 shall be validly agreed or undertaken without in each case the prior consent of [all Qualifying Shareholders][49], such consent to be signified either:

(i) by a vote in favour (whether on a poll or a show of hands) by or on behalf of all Qualifying Shareholders at a general meeting of the Company, provided in each case:

(A) such meeting has been duly convened and held; and

(B) each Qualifying Shareholder (or an authorised representative of, or a proxy duly appointed by, the Qualifying Shareholder) is present throughout the whole of such meeting and votes in favour of such matter; or

(ii) in writing signed by or on behalf of all Qualifying Shareholders; or

(b) If any Qualified Shareholder does not respond to any request for consent to any matter set out in Schedule 1 within thirty (30) days of first being asked in accordance with this Clause 5.4, such Qualified Shareholder shall be deemed to consent to the matter in question[50].

6 Confidentiality

6.1 *Confidentiality.* Each Party (the "**Receiving Party**") undertakes to:

(a) maintain as secret and confidential all Confidential Information obtained directly or indirectly from any other Party (the "**Disclosing Party**") in the course of this Agreement and to respect the Disclosing Party's rights therein; and

(b) use and disclose such Confidential Information only with the prior written consent of the Disclosing Party.

6.2 *Exceptions to obligations.* The provisions of Clause 6.1 shall continue [without limit of time][51], but 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, employees or Affiliates.

6.3 *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:

(a) 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

(b) permit the Disclosing Party to make representations (written or otherwise) in respect of the disclosure and/or confidential treatment of the Confidential Information.

6.4 *Employees, etc.* The Receiving Party shall procure that all of its Affiliates, and their respective officers, employees, other personnel, and advisers who have access to any of the Disclosing Party's information to which Clause 6.1 applies shall be made aware of and subject to these obligations and shall have entered into written undertakings of confidentiality at least as restrictive as Clauses 6.1, 6.2, 6.3 and 6.6 and which apply to the Disclosing Party's Confidential Information.

6.5 *Permitted disclosures*. Notwithstanding the provisions of this Clause 6, the RPO will not be in breach of this Agreement if it discloses the Company's Confidential Information to the RPO Organisations and Personnel, provided that the RPO Organisations and Personnel are bound to treat such information as Confidential Information belonging to the Company on terms not less restrictive than the terms of Clause 6 of this Agreement.

6.6 *Consequences of termination.* Upon any termination of this Agreement, the Receiving Party shall return to the Disclosing Party any documents or other materials that contain the Disclosing Party's Confidential Information, including all copies made, and shall make no further use or disclosure thereof.

7 Share transfers and issues

7.1 *No transfer of shares*[52, 53]. Each Shareholder acknowledges and agrees that no share in the capital of the Company may be sold, transferred or otherwise disposed of by him/her/it, except with the prior written consent of all of the Qualifying Shareholders, or in accordance with the provisions of Clause 8 or Clause 9.

7.2 [*Issue of shares*[54]. Notwithstanding any consent to issue any new shares that may be given by the Qualifying Shareholders in accordance with Clause 5.4, the Parties agree that the percentage shareholding in the Company owned by the RPO immediately following the Completion Date shall be maintained and protected from any dilution until such time as the Company shall have received more than €[●] in aggregate by way of subscription for shares in its share capital. If, in order to so maintain and protect the RPO's shareholding, the Company is required to issue further shares to the RPO, the RPO shall not be required to pay more than the nominal value for such shares (i.e. €[●] per share). The Parties shall take such action as may be required to give effect to this Clause 7.2.]

7.3 *Employee share option scheme*[55]. The Parties acknowledge that the Board is considering establishing a share option scheme under which a maximum of [●] percent of the total issued share capital of the Company may be issued to certain employees, senior management and other staff of the Company to reward their commitment, and to enhance their motivation, towards the Company. The Parties acknowledge and agree that (a) the establishment, including the terms and conditions, of any such scheme, and (b) the issue or any share options or shares in the share capital of the Company under such scheme, in each case shall require the prior approval of the Qualifying Shareholders in accordance with Clause 5.4.

7.4 *New shareholders to sign Deed of Adherence.* The Company shall procure that, and the Shareholders shall use their reasonable endeavours to procure that:

(a) any transferee or allottee of shares in the capital of the Company shall, prior to any transfer or allotment to it taking effect, have entered into a Deed of Adherence; and

(b) no proposed transferee or allottee of shares in the capital of the Company shall have their name entered in the register of members as holder of any shares in the Company unless they have entered into a Deed of Adherence.

7.5 *Requirements for new shareholders.* On entry into a Deed of Adherence by such a transferee or allottee, the transferee or allottee shall:

(a) comply with the provisions of, and perform, all the obligations in this Agreement as if it had been an original Party to this Agreement; and

(b) have the benefit of the provisions of this Agreement as if it had been an original Party to this Agreement.

7.6 *No assignment.* Without prejudice to the provisions of Clause 10.2, no Shareholder may assign the benefit of any provision of this Agreement, or any legal or beneficial interest therein, separately from its shares in the capital of the Company.

7.7 *Release from obligations.* A Shareholder who ceases to be legally and beneficially entitled to any shares in the capital of the Company and who has complied with the provisions of this Agreement relating to the transfer of such shares shall cease to be bound by, and benefit from, this Agreement, except in respect of Clause 6 which shall continue to apply to such Shareholder.

8 [Drag Along[56]

8.1 *Drag-along right.* If the Company, the Board, or any Shareholder at any time receives an Offer from a Potential Buyer, then any Shareholder who holds, or any Shareholders who together hold, more than [●] percent (the "**Threshold Condition**") of the total issued share capital of the Company on the date on which the Offer is received (the "**Accepting Shareholders**") may at any time prior to the expiry of the period of acceptance for the Offer issue written notice (the "**Drag-Along Notice**") to all of the other Shareholders (the "**Dragged Shareholders**") requiring them to accept the Offer. For the avoidance of doubt, if the Potential Buyer is a Shareholder (a) such Shareholder shall not be considered to be an Accepting Shareholder, and (b) such Shareholder's shareholding in the Company shall not be taken into account when determining whether the Threshold Condition has been satisfied.

8.2 *Drag-Along Notice.* The Accepting Shareholders shall ensure that the Drag-Along Notice sent to the Dragged Shareholders specifies:

(a) the details of the Potential Buyer;

(b) the price payable for each share and any other consideration to be received (directly or indirectly) by the Accepting Shareholders (or any of them); and

(c) any other terms of the Offer.

8.3 *Drag-along mechanism.* If the Accepting Shareholders issue a Drag-Along Notice:

(a) each Shareholder shall be bound to accept the Offer and to transfer all his/her/its shares in the Company to the Potential Buyer in accordance with the terms of the Offer; and

(b) each Shareholder agrees to execute the necessary instruments of transfer of the Shares, and deliver such instruments to the Potential Buyer and/or the Company as appropriate[57].]

9 [Tag Along[58]

9.1 *Tag-along right.* If at any time any one or more Shareholders (the "**Proposed Sellers**") proposes to sell to a Potential Buyer, in one or a series of related transactions, such number of shares which when registered would result in the Potential Buyer holding more than [●] percent of the total issued share capital of the Company (the "**Proposed Sale**"), the Proposed Sellers shall give written notice (the "**Tag-Along Notice**") to all the other Shareholders (the "**Tagged Shareholders**") at least [●] days prior to the proposed date of completion of the Proposed Sale.

9.2 *Tag-Along Notice.* The Proposed Sellers shall ensure that the Tag-Along Notice sent to the Tagged Shareholders specifies:

(a) the details of the Potential Buyer;

(b) the sale price for each share and any other consideration to be received (directly or indirectly) by the Proposed Sellers (or any of them), and the manner in which the Potential Buyer proposes to pay such sale price and other consideration;

(c) the number of shares which the Proposed Sellers propose to sell to the Potential Buyer; and

(d) any other terms upon which the shares are to be purchased.

9.3 *Tag-along mechanism.* The Proposed Sellers agree that:

(a) The Proposed Sale shall not be completed unless the Potential Buyer has unconditionally offered to buy a percentage of the shares owned by the Tagged Shareholders on the same terms as apply to the Proposed Sale, where such percentage shall be the same percentage of the shares owned by each of the Proposed Sellers as the Proposed Sellers wish to sell to the Potential Buyer or, where there is more than one Potential Seller and they each wish to sell a different percentage of their total shareholding in the Company to the Potential Buyer, whichever of those percentages as each of the Tagged Shareholders may elect.

(b) Such offer shall remain open for acceptance for not less than [●] days, and the actual period during which such offer shall remain open for acceptance shall be specified by the Proposed Sellers in the Tag-Along Notice.

(c) For the avoidance of doubt, no Tagged Shareholder shall have any obligation to accept any offer from, or to otherwise sell any of his/her/its shares in the Company to, any Potential Buyer.

9.4 *Relationship with drag-along rights.* The provisions of this Clause 9 shall not apply to any Proposed Sale which is to take place pursuant to an Offer under Clause 8.]

10 Termination

10.1 *Termination[59].* Subject to Clause 2.2, this Agreement shall come into effect on the Completion Date and shall continue in full force and effect for so long as any of the Shareholders, or any of their permitted assignees, holds any share(s) in the capital of the Company. [Notwithstanding the preceding sentence, this Agreement shall terminate early, immediately and without any further action, if any of the following events occurs:

(a) the Company suffers any Insolvency Event; or

(b) there is any Sale; or

(c) there is any IPO; or

(d) all of the Parties execute a separate written agreement, signed by themselves or their duly authorised representatives, to terminate this Agreement.]

10.2 *No assignment.* No Party shall assign or purport to assign or otherwise deal with any of its rights or obligations under this Agreement, except with the prior written consent of all other Parties.

10.3 *Clauses to survive termination.* If this Agreement expires or is terminated for any reason, the provisions of Clauses 6, 10.3, 11.5, 11.6 and 12 shall remain in full force and effect.

11 General obligations

11.1 *Conflicts.* If at any time any provision of the Constitution conflicts with any provision of this Agreement, the provisions of this Agreement shall prevail by the means set out in the following sentence. The Shareholders shall, whenever necessary, exercise all voting and other rights and powers respectively available to them to procure the alteration of the Constitution to the extent necessary to permit the Company and its affairs to be carried out as provided in this Agreement. By this Agreement, the Parties do not intend or purport to alter or deprive the Company of any statutory power that may not lawfully be so done.

11.2 *Giving effect to this Agreement.* Each Shareholder shall: (a) exercise all voting and other rights and powers of control as are from time to time available to it in relation to the Company; and (b) take, or refrain from taking, all other appropriate action within its powers; so as to procure that all provisions of this Agreement concerning the structure and regulation of the Company and the regulation by the Shareholders of its affairs set out in this Agreement are duly observed and given full force and effect, and that all actions required of the Shareholders are carried out in a timely manner. The liability of each Shareholder under this Clause 11.2 shall in each case be several so that each Shareholder shall only be liable for its own actions or failures to act.

11.3 *Shareholder disputes with the Company.* Notwithstanding any other provision of this Agreement, if a Shareholder (or other person connected with it) shall be in dispute with, or shall have a conflict of interest with, the Company, such Shareholder shall in its capacity as shareholder not do anything or omit to do anything which would or be likely to prevent the Company from exercising or from deciding whether or not to exercise such rights as it may have in respect of the matter or against the Shareholder (or person connected with it) in question.

11.4 *Warranties[60].* Each Party warrants that:

(a) it has the power and authority to enter into, and to perform its obligations under, this Agreement;

(b) when executed, its obligations under this Agreement will be binding on it; and

(c) the execution and delivery of, and performance by it of its obligations under this Agreement, will not result in any breach of applicable law.

11.5 *Restrictive covenants*[61, 62]**.** Each of the Founders undertakes to the Company and the RPO that, whilst he/she is a Qualifying Shareholder of the Company and for a period of [twelve (12)][63] months thereafter, he/she shall not:

(a) engage in, be concerned with, undertake, or be interested in (whether directly or indirectly) any business that competes with the Company, without in each case the prior written consent of all of the Qualifying Shareholders, except that nothing in this Clause 11.5 shall prevent the Founder from carrying out any research or teaching activities he/she may have at the RPO; or

(b) solicit, endeavour to solicit, induce or entice any employee to leave the employment of the Company whether or not such person would commit any breach of his contract of employment with the Company by so leaving; or

(c) solicit, or endeavour to solicit or entice away from the Company, solicit business from or deal with, in competition with the Company, any person who or which in the preceding [●] months shall have been a customer of, or in the habit of, dealing with the Company;

(d) solicit, endeavour to solicit, induce or entice any person who is engaged by the Company as a consultant, to terminate his engagement with the Company, whether or not such person would commit any breach of his consulting agreement with the Company by so terminating; or

(e) induce, or seek to induce any person who is providing goods or services to the Company or licensing any intellectual property rights to the Company or is in negotiations with the Company to provide goods or services or license intellectual property rights to the Company to cease to do so or to vary the terms on which it does so.

11.6 *Separable obligations.* Each of the Founders acknowledges and agrees that each of the restrictions in Clause 11.5 is fair and reasonable and is necessary to protect the legitimate business interests of the Company. Each of the restrictions in Clause 11.5 shall be construed separately, and the invalidity or unenforceability of any restriction shall not affect the validity or enforceability of the others.

11.7 *Independent legal advice.* Each of the Founders acknowledges that (a) he/she should consider obtaining independent legal advice on the contents of this Agreement, including on the contents of Clause 11.5, and (b) the other Parties have given the Founders the opportunity to take such advice. Accordingly, each of the Founders confirms that he/she has read and fully understood the provisions of this Agreement and agrees to be bound by, and comply with, those provisions.

12 Miscellaneous

12.1 *Force majeure*. No Party shall have any liability or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement that result from circumstances beyond the reasonable control of that Party, including labour disputes involving that Party. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.

12.2 *Amendment.* This Agreement may only be amended in writing signed by a Party or duly authorised representatives of each of the Parties.

12.3 *Waiver.* No failure or delay on the part of a Party to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy.

12.4 *Invalid clauses.* If any provision or part of this Agreement is held to be invalid, amendments to this Agreement may be made by the addition or deletion of wording as appropriate to remove the invalid part or provision but otherwise retain the provision and the other provisions of this Agreement to the maximum extent permissible under applicable law.

12.5 *No agency.* This Agreement shall not operate so as to create a partnership or joint venture of any kind between the Parties or constitute any Party as the agent of another Party.

12.6 *Interpretation.* In this Agreement:

(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 the masculine include the feminine and vice versa;

(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; and

(e) where the word “including” is used it shall be understood as meaning “including without limitation”.

12.7 *Notices.* Any notice to be given under this Agreement shall be in writing and shall be sent by pre-paid post to the address of the relevant Party set out at the head of this Agreement, or such other postal address as that Party may from time to time notify to the other Party in accordance with this Clause 12.7. Notices sent as above shall be deemed to have been received three (3) working days after the day of posting by pre-paid mail.

12.8 *Law and jurisdiction.*

(a) 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.

(b) Notwithstanding Clause 12.8(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, including mediation in accordance with the Mediation Act 2017[64]. For the avoidance of doubt, however, nothing in this Agreement shall prevent or delay a Party from seeking an interim injunction.

12.9 *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.

12.10 *Announcements.* Neither Party shall make any press or other public announcement concerning any aspect of this Agreement, or make any use of the name of any other Party in connection with or in consequence of this Agreement, without the prior written consent of the other Party.

12.11 *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. The Parties acknowledge that they are not relying on any representation, agreement, term or condition which is not set out in this Agreement.

12.12 *Counterparts.* This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

AGREED by the Parties through their authorised representatives:

For and on behalf of
[Full legal name of the Company]

Signed

Print name

Title

Date

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 Founder]

Signed

Print name

Title

Date

For and on behalf of
[Full legal name of the Founder]

Signed

Print name

Title

Date

SCHEDULE 1
MATTERS REQUIRING CONSENT IN ACCORDANCE WITH CLAUSE 5.4[65]

[The matters requiring consent in accordance with Clause 5.4 are as follows:

(a) any alteration to the Constitution;

(b) any change to the issued share or loan capital of the Company, or any grant of any option or other right to subscribe for any share or loan capital of the Company, or any issue of securities convertible into such share or loan capital;

(c) any alteration of any right attached to any share in the Company, or any creation of any new equity interest in the Company;

(d) any resolution or petition for the winding up, administration or examinership of the Company (or any analogous event);

(e) subject to Clause 4 above, the appointment of any person to be a director of the Company, or the remuneration in excess of €[●] or granting of any pension rights to any director of the Company, or the entering into or making of any material change to any contract of employment with any director or senior manager of the Company;

(f) the entering into of any contract of employment or for the provision of services to the Company which cannot be terminated on less than [●] months' notice, without payment of compensation;

(g) the granting to any person (other than a director of the Company) of authority to act on behalf of the Company[66];

(h) any acquisition, whether by formation or otherwise, by the Company of any subsidiary, or any disposal or dilution of the Company's interest in any subsidiary;

(i) any Sale;

(j) any disposal of shares in the capital of the Company amounting to an IPO;

(k) any borrowing by the Company of any sums in excess of €[●] at any time;

(l) any undertaking by the Company in any financial year of any single item or series of items of capital expenditure involving an aggregate liability in excess of €[●];

(m) the making by the Company of any loan, or the giving of any advance or other credit (other than credit given in the normal course of the Company's business), in excess of €[●] to any person except for the purpose of making deposits with the Company's bankers;

(n) the giving by Company of any guarantee, bond or indemnity in respect of or to secure the liabilities or obligations of any person;

(o) the creation or issue of any debenture, mortgage, charge or other security over any assets of the Company (except for the purpose of securing sums borrowed by the Company from its bankers in the ordinary and usual course of business);

(p) any acquisition by the Company of any share or loan capital of any body corporate (including that of the Company or any subsidiary) or the entering into any partnership or profit-sharing arrangement by the Company with any person;

(q) any declaration or payment of any dividend or other distribution in respect of any share capital of the Company;

(r) the entering into by the Company, or the making of any material change to, any contract or transaction with any person except on normal arm's length commercial terms;

(s) the entering into by the Company of any agency or distribution agreement which is expressed to contain any element of exclusivity as regards any products or services dealt in or as to the area of the agreement;

(t) the entering into of any licence or other similar agreement relating to intellectual property to be licensed to or by the Company which is otherwise than in the ordinary course of business;

(u) the introduction by the Company of any executive or employee share option or profit sharing or bonus scheme of any nature, and the identity of any executive or employee who will benefit from any such scheme;

(v) the engagement by the Company of any employee at a salary in excess of €[●] per annum, increase remuneration of an employee to a salary in excess of €[●] per annum or dismiss any employee with a salary in excess €[●] per annum; and

(w) the entering into of any agreement for consultancy or management services which will, or is likely to, result in the Company being managed otherwise than by its directors, or which involves a consideration exceeding €[●] per annum.]

SCHEDULE 2
DEED OF ADHERENCE[67]

This DEED dated ____ is between:

(1) [●] **Limited** (the "**Company**"), a private company limited by shares registered in Ireland under Part 2 of the Companies Act 2014 under company registration number [●], whose registered address is at [●];

(2) [●] (the "**New Shareholder**"), [a private company limited by shares registered in Ireland under Part 2 of the Companies Act 2014 under company registration number [●], whose registered address is at] [●]; and

(3) **THE PERSONS** whose names and addresses appear in the attached Annex (together, the "**Existing Shareholders**").

BACKGROUND:

(A) With effect from [●], the Company and the Existing Shareholders entered into a Subscription and Shareholders' Agreement (the "**Shareholders' Agreement**") to regulate the affairs of the shareholders in the Company with respect to each other.

(B) [[●] (the "**Transferor**") is [an original Party to the Shareholders' Agreement] [a Party to the Shareholders' Agreement by virtue of a Deed of Adherence dated [●].][68]

(C) The New Shareholder has become entitled to [a transfer of] [be issued with] [●] shares of €[●] each in the share capital of the Company.

(D) It is a term of the Shareholders' Agreement that no [transfer] [issue] of shares in the Company shall be effected unless the [transferee][the person to whom such shares are to be issued] shall have first entered into a deed in the form of this Deed of Adherence.

This DEED witnesses as follows:

1. The New Shareholder hereby undertakes to, and covenants with, the Company and each of the Existing Shareholders that, with effect from the date of this Deed, the New Shareholder will be bound by and will comply with and perform every provision of the Shareholders' Agreement [by which the Transferor was bound] in every way as if the New Shareholder had been named in the Shareholders' Agreement as a party thereto.

2. With effect from the date of this Deed of Adherence, the New Shareholder shall:
   (a) become a shareholder in the Company [and the Transferor shall cease to be a shareholder in the Company]; and
   (b) have the benefit of the provisions of the Shareholders' Agreement as if he/she/it had been named in the Shareholders' Agreement as a party thereto.

3. [For the avoidance of doubt, the New Shareholder shall not be: (a) entitled to any amount which has fallen due for payment to the Transferor; or (b) liable in respect of any breach or non-performance of the obligations of the Transferor pursuant to the Shareholders' Agreement; in each case before the date of this Deed of Adherence. The Transferor shall remain entitled to each such amount and shall not be released from any liability in respect of any such breach or non-performance.]

EXECUTED and DELIVERED as a DEED by:
[Insert appropriate signature blocks]

ANNEX

(Insert names and addresses of the Existing Shareholders)

Drafting Notes

[1] Insert the full name of the company here (and also on the covering page).

[2] This is a simple shareholders' agreement for an early-stage limited company, where there is no investment contemplated. It has been drafted with a spin-out company from an RPO in mind and assumes that the RPO and the individual "founders", where the founders may be the academics at the RPO who developed the intellectual property to be commercialised by the spin-out company and possibly also an independent business person (if any has been found to assist with the running of the company), will be getting shares at the outset. To keep matters simple, the template assumes that the early-stage spin-out company has only one class of share.

If thought appropriate, this template may be used as the first shareholders' agreement for the early-stage spin-out company to set out the initial arrangements between the parties. However, there is no legal requirement for a company to have a shareholders' agreement - it can instead rely on the default rules provided by the Companies Act 2014 if these are thought sufficient. If the parties choose to enter into a shareholders' agreement to govern the arrangements between them, the use of this particular template is also not mandated (e.g. by the National IP Protocol or otherwise) and many RPOs already have their own template shareholders' agreements that they may prefer to use. In addition, if the spin-out company subsequently seeks significant, external investment, it is likely that the investors will have their own requirements for the shareholders' agreement and, therefore, may require the replacement of this document for something more detailed and sophisticated in view of their contribution to the company. Nevertheless, even if this template will not be used in any given transaction, the authors hope that it may still be useful as a reference to explain some of the issues that can sometimes arise when drafting and negotiating shareholders' agreements. Further information can also be found in the accompanying KTI Practical Guide entitled "Practical Guide to Spin-Out Company Agreements", which should be read alongside this template.

[3] Users of this template should note that the authors have not drafted it to take account of any individual requirements of Irish third-level educational institutions which might apply. Users are advised to seek out and address by additional provisions any peculiarities or requirements of a relevant institution.

[4] Given that executing documents as deeds can sometimes cause practical issues for RPOs (particularly where the seal has to be applied), this document has been structured as a simple agreement under hand (assuming that there is no issue with consideration and, for further information on this point, the user should refer to the KTI Practical Guide to Legal Issues in Contracts with RPOs). For completeness, we also note here that there is no power of attorney included in this template, as these can also raise difficult issues for RPOs. Users should check the signing formalities of the RPO to ensure that it is permitted to sign under hand.

[5] This should be the date on which the last party signs and should be inserted by the last signatory on that date here (and also on the covering page). Where the agreement is being circulated and signed in counterpart, this date should be confirmed with the Company before it is written in to ensure that the correct last signatory date is inserted.

[6] Insert (here and also on the covering page) the full name of the spin-out company. The spin-out company's registered number and registered address also need to be inserted here. This wording assumes that the spin-out company will be a limited company (registered under Part 2 of the Companies Act 2014). If the company is of another type – for example, a designated activity company (or DAC) – the wording of this description should be amended as appropriate (e.g. DACs are incorporated under Part 16 of the Companies Act 2014). To give some brief explanation of the difference:

Limited companies have the full and unlimited capacity to carry on and undertake any business or activity, to do any act or enter into any transaction and, for those purposes, limited companies have full rights, powers and privileges (see section 38 of the Companies Act 2014). On the other hand, designated activity companies only have the capacity to do the acts or things stated in the objects clause in their memorandums (see section 972 of the Companies Act 2014).

[7] Insert (here and also on the covering page) the full name of the RPO. The statute or charter under which the RPO was incorporated or established, and its registered/principal address also need to be inserted here. Individual RPOs will have their own legal formalities which will need to be completed to bind the RPO.

[8] Insert (here and also on the covering page) the full name of each of the individual founders. Their residential addresses also need to be specified here. If there will be more than two founders, additional lines should be added so that each of the founders is described separately. However, if there will be only one founder, the placeholder wording for the fourth party should be deleted.

As mentioned above, the founders may be the academics at the RPO who developed the intellectual property to be commercialised by the spin-out company and/or may be an independent business person (if any has been found to assist with the running of the company). Only individuals who already own shares in the spin-out company, or who will be receiving shares under this agreement, should be listed here.

[9] At a practical level, the more parties there are to this agreement, the harder it can become to manage the arrangements. Accordingly, careful thought should be given as to who is given shares.

[10] Please see the above two comments.

[11] Insert details of the spin-out company's issued share capital immediately before this shareholders' agreement is signed, i.e. the number and nominal value of all shares that have been issued. Once the details have been entered, delete the placeholder wording and square brackets as appropriate.

[12] Insert the number of shares held by each of the Initial Shareholder[s] immediately before this shareholders' agreement is signed. Once the details have been entered, delete the placeholder wording and square brackets as appropriate.

[13] Insert the full names of the parties who will be receiving shares under this agreement. Once the details have been entered, delete the placeholder wording and square brackets as appropriate.

[14] It is very important that the basis on which each party is receiving shares is considered carefully, as this template does not include any provisions for the company to buy back shares or otherwise require a shareholder to forfeit any of their shares. Accordingly, shares should not be issued under this agreement for future performance, as if the shareholder does not perform, this template does not provide a mechanism to require the shareholder to give up any of their shares. If future performance, or some other future event, is the basis of the issue of shares, the user should consider putting "buy-back" or "leaver" provisions in place (whether in this agreement, in a director's service contract (if applicable) or in a separate agreement) or instead issuing share options where the conditions for "vesting" can be clearly set out. Please note that share buy-back by a company is regulated by provisions in the Companies Act 2014 and, accordingly, carefully thought needs to be given to these provisions and the drafting of any relevant provisions.

[15] To include all of the items listed in this definition in an annual business plan would result in a detailed document and this may be thought too heavy-weight for an early-stage spin-out company. Accordingly, the wording of this definition has been included in square brackets to flag that it can be tailored to the parties' requirements in any individual case, but the authors hope that users find it helpful having template wording to hand from which it can pick what is the appropriate content and level of detail for the annual business plans in any given case.

[16] A limited company is required to have a secretary (see section 129 of the Companies Act 2014), and it can be one of the directors.

[17] Insert the date on which this shareholders' agreement will come into effect. Please note that the pre-completion conditions set out in clause 2 will need to have been satisfied (or waived) by this date.

[18] Section 19 of the Companies Act sets out the form the constitution must take and what it must state.

[19] A deed of adherence is a standard document that is executed when a new person or entity becomes a shareholder in the spin-out company to bind them to the terms of the shareholders' agreement. By convention, these documents are executed as a deed (probably to get around any argument that the new shareholder is not bound because of a lack of consideration).

[20] Insert here the names of the individual founders who are parties to this shareholders' agreement. As mentioned in a previous comment, this will probably be the academics at the RPO who developed the intellectual property to be commercialised by the spin-out company and/or may be an independent business person (if any has been found to assist with the running of the company).

[21] As it seems to the authors that there is at present no consensus across Irish RPOs about which party should incorporate the spin-out company, this definition has been included to make the template work for a number of scenarios to provide flexibility. The name of the party or parties that incorporated the spin-out company should be listed here (which is likely to be the RPO, the founders, a sub-set of the founders, or a combination of these). If this definition is not required, it can be deleted, and knock-on changes made to the template.

Please note that which party incorporates the spin-out company may have tax consequences. As tax is a complex subject that is dependent on the individual circumstances, this template does not address any tax issues that shareholder arrangements may raise. General, introductory commentary on certain tax issues can be found in the KTI Practical Guide to Spin-Out Company Agreements. However, tax is an important issue and, accordingly, the user should seek specific advice.

[22] This definition has been left in square brackets to flag that careful thought should be given to it in each case this template is used, as this will trigger one of the conditions when the shareholders' agreement should fall away.

[23] This definition is used in clause 8, which sets out the "drag-along" provisions, and also in clause 9, which sets out the "tag-along" provisions. Careful thought should be given about this definition – and in particular about whether any of the original shareholders to this agreement can be a Potential Buyer – e.g. as only people or entities satisfying this definition can trigger a drag-along (or a forced sale of shares) event.

[24] Careful thought should be given as to what is the appropriate percentage shareholding to state here. Qualifying Shareholders are all placed on an equal footing (irrespective of what number of shares they actually own) and certain matters (e.g. see clause 5.4 and schedule 1) require their unanimous consent to proceed. Accordingly, depending on what is stated in schedule 1 (and other clauses of the template), they may be given a high-degree control over the company. If there are several Qualifying Shareholders, this can make decision making and other matters difficult to manage at a practical level, unless a careful process is put in place.

[25] The name of the party or parties giving the warranties in clause 3.2 should be inserted here. It is likely that the Warrantors will be the Company and the Initial Shareholders – unless the RPO is an Initial Shareholder and it has a policy against giving warranties. Like for the definition of Initial Shareholder[s], this definition (of Warrantors) has been included to try to ensure the template is flexible and works for a number of scenarios. If this definition is not required, it can be deleted, and the appropriate knock-on changes made to the template.

[26] It is recommended that service contracts (or employment contracts if appropriate) are put in place with all individuals who are to be appointed as directors of the company to set out the basis of their appointment, including a description of the role and level of commitment that is expected, how conflicts of interests should be handled, whether any payments are due to the director, the circumstances in which the director may be required to resign, intellectual property and confidentiality, post-appointment obligations, etc.

[27] Insert here the list of documents to be entered into at the same time as the shareholders' agreement as part of the spin-out process that the RPO wants to pre-approve.

[28] Insert here a list of "corporate" actions that the existing shareholders need to approve before the shareholders' agreement is signed.

[29] Insert here a list of any other matters that need to be addressed as part of the spin-out process before the shareholders' agreement is signed or delete this sub-clause if not required.

[30] Users should note that certain matters may have to be satisfied prior to completion in order to comply with company law requirements – e.g. if any "corporate" actions, such as sub-dividing the share capital or giving authority to allot, are required

in order to give effect to the arrangements described in clause 3.4. If this is the case, it would not be possible for the RPO and/or the Initial Shareholder[s] simply to waive the requirement to satisfy these matters, as they must be fulfilled to comply with company law.

[31] Insert details of the spin-out company's issued share capital immediately before this shareholders' agreement is signed, i.e. the number and nominal value of all shares that have been issued. Insert also the number of those shares held by each of the Initial Shareholder[s]. Once the details have been entered, delete the placeholder wording and square brackets as appropriate.

[32] This is a relatively light set of warranties. The thinking behind this clause is that, the party or parties being issued shares under this agreement may want certain assurances about what may have happened to the company in the period between it being incorporated and the shareholders' agreement being signed. Given the early-stage of the company, and that the RPO may be one of the Initial Shareholder[s], the warranties are fairly light-touch. However, even though relatively light, a party should not give warranties without carrying out the necessary due diligence.

[33] Insert here the name of the party or parties that will be receiving shares under this agreement. This clause is designed to ensure that any "corporate actions" that may be required to be completed to enable the issue of new shares to those parties have been completed. See section 69 of the Companies Act 2014 for further guidance.

[34] Insert here a list of the documents that the RPO is required to sign at the same time as the shareholders' agreement, such as the IP licence agreement.

[35] Insert here a list of the documents that each of the founders is required to sign at the same time as the shareholders' agreement, such as service agreements (if they are also to be directors).

[36] Insert here details of the names of the party or parties receiving shares under this agreement. Insert also the nominal value of those shares, the number of shares each of them will receive and the price that will be paid for the shares. The price may be the nominal or par value of the shares, if no party will be making an "investment" in return for shares.

[37] As mentioned above, the subscription price for the shares could be their nominal, or par, values, which could be a very small amount.

[38] Insert here the details of the relevant bank account.

[39] There are "blanks" that need to be filled in here as well as appropriate.

[40] If any person is being appointed as a company secretary under this Agreement, a corresponding filing at the Company Registration Office will be required.

[41] Any person being appointed as a director under this Agreement will have to have consented to act in that capacity and a filing at the Company Registration Office will be required to record the appointment.

[42] These forms may include Form B5 for allotments and Form B10 for secretary or director changes.

[43] This clause gives the RPO the right to appoint a director and/or an observer for as long as the RPO is a Qualifying Shareholder in the company, but it does not oblige the RPO to appoint either. If appointed, the clause also provides for the RPO's director or observer to share information learnt at board meetings with the RPO and certain others. This is usually an important provision for an RPO. Any individual appointed by the RPO as a director will owe fiduciary duties to the company and may not be entitled to share information with the RPO, the party that appointed them as a director, without an express right to do so. Careful thought should be given as to the definition of the RPO Organisations and Personnel to ensure that it strikes the right balance for the parties.

[44] This is a fairly light-touch clause that simply requires the spin-out company to send a copy of its annual business plan to those shareholders who each own more than a certain percentage of shares in the company. Sometimes clauses such as this

are more onerous to the company, for example sometimes the company may be required to seek the approval of those shareholders to the annual business plan and then operate within the bounds of that approved plan, etc. Accordingly, the wording of this clause should be considered careful to ensure that the right balance is struck for the particular case in question.

[45] There are blanks to be filled out in this clause as appropriate.

[46] The Companies Act 2014 provides that the default minimum is two directors. Accordingly, if this clause is going to vary this position, the Company's constitution should be amended to reflect the agreed number.

[47] This wording puts all directors on an equal footing. If the RPO has appointed a director and wants to strongly protect its position, it could consider whether it might be appropriate to amend this wording to state that no board meeting would be quorate unless the RPO director was present at the meeting.

[48] The user should note that there are no deadlock provisions in this template. Deadlock provisions are used so that the company can find a way forward when the shareholders cannot reach agreement. The provisions can be controversial – as they usually provide for a shareholder to sell their shares and cease involvement in the company – when shareholders cannot agree. For this reason, they have not been included in this template to try to keep the negotiations simple.

[49] This template puts all Qualifying Shareholders on an equal footing (e.g. by requiring all of them to agree unanimously in order for certain decisions to be taken, irrespective of the actual number of shares they each own). Careful thought should be given to this provision as to whether this is appropriate for the particular company in question and, if not, amended accordingly. For example, the clause could be amended so that a certain percentage of Qualifying Shareholders need to agree to the matters set out in Schedule 1, rather than all of them.

[50] This wording has been included to address what should happen if a Qualified Shareholder is unresponsive to try to ensure that the company can carry on business. However, this wording does not address what should happen if a Qualified Shareholder is uncooperative or hostile – this would typically be dealt with through deadlock provisions, but none are included in this template for the reasons set out in one of the above comments. These issues may also be addressed through share buy-back or share option provisions, but again none are included in this template in the interests of simplicity. Accordingly, the user should be aware of these points and should consider carefully whether this is appropriate for the particular company in question.

[51] This wording specifies the duration of the confidentiality obligations. If the duration (without limit of time) is appropriate, the square brackets should be deleted. Alternatively, the wording should be amended as appropriate.

[52] Sometimes shareholders' agreements set out a pre-emption mechanism on a transfer of shares (i.e. so shares are transferred first to existing shareholders (if they want them) before going to a third party). This can add a couple of pages of drafting to the document and, in the interests of simplicity, this has not been built into this template. Instead, a straightforward "no transfer" without the consent of the Qualifying Shareholders provision has been included.

[53] In addition, sometimes these types of "no transfer" clauses are more nuanced and permit certain limited types of transfers, e.g. to affiliates in the case of shareholders who are organisations or to family trusts in the case of shareholders who are individuals. Again, in the interests of simplicity, this wording has not been built into this template.

[54] This clause aims to protect the RPO against dilution of its shareholding until the company has raised a certain minimum amount of investment. It is drafted simply and describes the intended effect, rather than the mechanism that should be applied to achieve it. These types of clauses are sometimes described as "ratchets" and can require a page or more of drafting (including mathematical formulae) if set out in full.

[55] The user should note that this clause does not provide for the setting up of the employee share option scheme – this would still need to be approved separately by the Qualifying Shareholders and the documentation drafted accordingly. However, it puts a "marker in the sand" that the company is planning to ask the Qualifying Shareholders for their consent on this topic. If something more concrete is required, this will need careful thought and careful (additional) drafting.

[56] This is a simple "drag-along" clause under which shareholders who together own more than a certain (majority) percentage of the shares in the company can force the remaining (minority) shareholders to sell their shares if they receive an Offer from a Potential Buyer to purchase the entire issued share capital of the company. Although the clause can force otherwise unwilling shareholders to sell their shares, it offers them some comfort given that the Potential Buyer must purchase their shares at the same price and on the same terms as the Potential Buyer has offered to buy the shares from the majority shareholders. This clause is in square brackets to flag that careful thought should be given as to whether a drag-along mechanism is appropriate for the particular case and, if it is thought appropriate to include this mechanism, the square brackets should be deleted and further careful thought should be given as to what is an appropriate percentage shareholding to specify in clause 8.1 that may trigger the process.

[57] Traditionally, this section of the drag-along clause would include power of attorney wording (e.g. appointing a director of the company to act as the "dragged" shareholders' attorney if the process is being followed but they refuse to carry out the necessary formalities to complete the sale). However, as powers of attorney can be difficult – or sometimes impossible – for RPOs to accept, this type of wording has not been included here to keep matters simple.

[58] This is a simple "tag-along" clause. If a share sale is proposed which would result in a Potential Buyer owning more than a certain (majority) percentage of the shares in the company, the other shareholders can force the Potential Buyer to also purchase a percentage of their shareholding at the same price and on the same terms, so that they are not left disadvantaged by the sale. Accordingly, it has the opposite effect to a drag-along clause in that drag-along clauses protect the majority shareholders and tag-along clauses protect the minority. Like clause 8, this clause is in square brackets to flag that careful thought should be given as to whether a tag-along mechanism is appropriate for the particular case and, if it is thought appropriate to include this mechanism, the square brackets should be deleted and further careful thought should be given as to what is an appropriate percentage shareholding to specify in clause 9.1 that may trigger the process.

[59] Careful thought should be given as to when, and in what circumstances, the parties want the arrangements set out in this shareholders' agreement to fall away. This clause provides some examples, but not all of these will be appropriate for each situation and the wording will need to be considered on a case-by-case basis. Accordingly, some of the wording of this clause has been placed in square brackets.

[60] This is another light touch set of warranties. Nevertheless, the parties should ensure that they have done the necessary due diligence before agreeing to give them.

[61] This clause provides a list of contractually enforceable (i.e. binding) promises and obligations that the individual founders involved with the company are required to give. These promises and obligations cover issues such as the individuals agreeing not to engage in activities that would compete with the company and not to "poach" the company's staff or clients. These promises and obligations are usually considered important when the spin-out company is in its early stages to give it the best chance of getting "off the ground".

[62] This topic can also be covered in any service or employment contract that may be in place with the individual founders. However, that contract will only be enforceable by the company, whereas promises given in the shareholders' agreement may be enforceable by the shareholders as well as the company.

[63] The period that should be specified here should be considered carefully, as these sorts of provisions are scrutinised by the courts and may be held unenforceable if too long a period is started (or if the scope of the promises are unreasonably broad). What is considered a reasonable period will depend, amongst other things, on how key the individual is to the company.

[64] The user should note that, under the Mediation Act 2017, the furnishing of information by a solicitor to a client prior to commencing litigation in relation to mediation is now mandatory (in that a statutory declaration must be furnished by the solicitor and filed with the court papers when commencing litigation confirming that the client has been provided with certain information about mediation before proceedings are commenced) and section 7 of that Act specifies some rules for the agreement to mediate if the parties agree to mediate.

[65] This list is an example of the types of matters that sometimes get left for Qualifying Shareholders to approve. The list can be tailored as appropriate for the particular company in question, if it is thought too extensive. If the list is deemed appropriate, the blanks need to be completed.

[66] This wording is trying to deal with the granting of powers of attorney and agents (e.g. who may sign contracts on behalf of the company).

[67] This is a template deed of adherence. For the purposes of signing the shareholders' agreement, the blanks can be left empty (i.e. as they are). They only need to be completed at the point the deed of adherence is used (i.e. when a new shareholder is bought on board).

[68] For a new issue of shares, this recital paragraph (B) should be deleted in its entirety.

KTI Model Standstill Letter – early stage company

Dated ______________________________________20[●]

(1) [*Full legal name of the RPO*]

and

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

MODEL STANDSTILL LETTER

[*On the RPO's letterhead*]
[*Insert date*]

[*Insert founder's full name*]
[*Insert founder's residential address*]

Dear [*insert name*],

Standstill Letter[1]

I write on behalf of [*insert the RPO's full name*][2] (the "**RPO**") to confirm our recent discussions with you about [*insert details of the patent(s) and know-how in question*] (the "**IP**") that you developed in the course of your employment duties with the RPO.

As part of those discussions, you have asked the RPO to grant you a period of exclusivity over the IP in order to give you an opportunity to explore whether there may be a business case to further develop and exploit the IP through a spin-out company. Accordingly, the purpose of this letter is to set out the terms (the "**Terms**") under which the RPO would be prepared to grant you a period of exclusivity over the IP and to request your agreement to them.

The Terms to which the RPO requests your agreement are as follows:

1. *Exclusivity Period.* Subject to the Terms, the RPO agrees that, for a period of [180 days][3] starting on the date on which this letter is signed by both the RPO and you (the "**Exclusivity Period**"), the RPO will not grant to any third party any licence under the IP for commercial purposes [in the field of [*insert*][4] (the "**Field**") and in the territories of [*insert*][5] (the "**Territory**")].

2. *Reservation of rights.* At all times during the Exclusivity Period, the RPO reserves for itself and its collaborators the [exclusive,] irrevocable, worldwide, royalty-free right to use the IP for the purposes of (a) research that is not directed to the development of commercial products and services, (b) publication, and (c) teaching.

3. *Confidentiality.* The RPO and you acknowledge that during the Exclusivity Period each of us may receive Confidential Information from the other. "**Confidential Information**" shall mean any information which, if in writing, is marked as confidential or which, if not in writing, is otherwise characterised as confidential at the time of disclosure. The RPO and you each agree: (a) to use the Confidential Information received from the other only for the purposes of these Terms and not for any other purpose; and (b) to keep such Confidential Information confidential and not directly or indirectly disclose it or make it available to any third party. The obligations in this paragraph will not

apply to information which is or subsequently becomes publicly known through no act or omission of the party that receives it hereunder.

4. *Duration and termination.* The Terms will (a) come into effect on the date on which they are signed by both the RPO and you, and (b) remain in force for the Exclusivity Period. Notwithstanding the preceding sentence, either the RPO or you may terminate the Terms at any time by notice in writing to the other (the "**Other Party**"), such termination to take effect as specified in the notice, if the Other Party is in material breach of the Terms and, in the case of a breach capable of remedy within thirty (30) days, the breach is not remedied within thirty (30) days of the Other Party receiving notice specifying the breach and requiring its remedy[6].

5. *Consequences of termination.* On any expiry or termination of the Terms for any reason, neither you nor the RPO will have any further obligation to the other, except under Clause 3 which will continue to apply.

6. *No other obligations.* Except for the Terms set out in this letter, neither the RPO nor you have any obligation to the other in connection with the IP. Without limiting the scope of the previous sentence, the RPO has no obligation to negotiate or to enter into any licence or other agreement with you or any company that you may form.

7. *Publicity.* Neither the RPO nor you will make any press or other public announcement concerning any aspect of this letter, nor make any use of the other's name or any trademark or other proprietary mark in connection with this letter, without the other's prior written agreement.

8. *Assignment.* You will not assign any right, interest, or obligation arising under this letter without the RPO's prior written agreement.

9. *Law and jurisdiction.* Should any legal issue arise in connection with this letter or the Terms, it will be governed by and construed in accordance with the laws of Ireland and the Irish courts will have exclusive jurisdiction. Notwithstanding the preceding sentence, before commencing any litigation, you and the RPO will consider in good faith whether it would be reasonable in the circumstances to agree to pursue any alternative dispute resolution processes, including mediation in accordance with the Mediation Act 2017. For the avoidance of doubt, however, nothing in the Terms will prevent or delay you or the RPO from seeking an interim injunction.

Please consider the Terms of this letter carefully. If you agree with them, please confirm your understanding and acceptance of the Terms by returning one signed copy of this letter to the above address marked for the attention of [*insert name*], whereupon the Terms will take effect as a legally binding contract between you and the RPO.

Yours sincerely,

For and on behalf of	**Accepted and agreed by:**
[*Full legal name of the RPO*]	**[*Full name of the Founder*]**
______________________ Signed	______________________ Signed
______________________ Name	______________________ Name
______________________ Title	______________________ Title
______________________ Date	______________________ Date

Drafting Notes:

[1] This is a template "standstill" letter drafted to be sent by an RPO to one of its academics who is considering whether to found a spin-out company to further develop and exploit certain intellectual property that he or she has generated whilst working at the RPO. The letter assumes that the spin-out company has not yet been incorporated, which is the reason why the letter is addressed to the academic personally. The letter aims to give the academic a limited period of "exclusivity" over the relevant IP during which he or she can explore whether there may be a business case to further develop and exploit the IP through a spin-out company. The template is light-touch and it does not place any obligations on the academic to actually do, or achieve, anything with regards to the IP or the spin-out company during the period of exclusivity – this is all entirely within the hands of the academic. Similarly, the template does not place the RPO under a high-level of obligation either – its main obligation being not to do deals with the IP (in the Field and in the Territory) during the exclusivity period.

[2] There are a number of "blanks" to be filled out in this template. The description enclosed within the square brackets provides the instruction for what needs to be completed.

[3] The period of exclusivity, once settled, should be taken out of square brackets.

[4] Insert the appropriate field definition. This is the field in relation to which the RPO would promise not to grant any licences under the IP during the exclusivity period.

[5] Insert the appropriate list of territories. These are the territories in relation to which the RPO would promise not to grant any licences under the IP during the exclusivity period.

[6] This template provides only very limited ways in which a party could bring the period of exclusivity to an end early – i.e. if there has been a material breach that has not been remedied.

KTI Model Option to Licence Agreement to a Spin-out Company

Dated ______________________________________20[•]

(1) [*Full legal name of the RPO*]

and

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

MODEL OPTION TO LICENCE AGREEMENT TO A SPIN-OUT COMPANY

MODEL OPTION TO LICENCE AGREEMENT TO A SPIN-OUT COMPANY [1] [2] [3]

This Agreement dated[4] ____ 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 [●][5]; and

(2) [●] Limited (the "**Company**"), a private company limited by shares registered in Ireland under Part 2 of the Companies Act 2014 under company registration number [●], whose registered address is at [●][6].

Background:

A. The RPO has developed certain technology and owns certain intellectual property rights relating to [●][7], including the Patents and the Know-how[8].

B. The Company is an early-stage, pre-investment spin-out company from the RPO.

C. The Company wishes to be granted an Exclusivity Period, during which the RPO would agree not to grant to any third party any licences under the Patents or the Know-how for commercial purposes in the Field and in the Territory. The purpose of the Exclusivity Period is to give the Company an opportunity to explore whether there may be a business case to further develop and exploit the Patents and the Know-how[and to undertake to achieve a series of Milestones in connection therewith][9].

D. If the Company [achieves the Milestones and][10] exercises the Option during the Exclusivity Period, the Parties then intend to negotiate a licence agreement under which the Company would be granted the Licence Rights under the Patents and the Know-how, all in accordance with the provisions of this Agreement.

The Parties agree as follows:

1. Definitions

1.1 In this Agreement, the following words shall have the following meanings:

[Business Plan]	[The initial written business plan of the Company, which shall include at least the following information to be set out at a reasonable level of detail: [*insert details of what should be included*].][11]
Commencement Date	[●][12].
Confidential Information	(a) All Patents and Know-how; and (b) All other technical or commercial information that: i. 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 ii. 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 iii. any copy of any of the foregoing.
Exclusivity Period	The period of [six (6)][13] months from the Commencement Date, subject to any earlier termination of this Agreement under Clause 5.

[Expression of Interest Letter]	[A letter addressed to the Company that (a) is written on behalf of, and is signed by, an authorised representative of a professional investor, and (b) includes a *bone fide* expression of interest on the part of the professional investor to invest a minimum of €[●] as the purchase price for a subscription of shares in the Company in a single transaction.][14]
Field	[●][15].
Know-how	Technical information in the Field developed by the RPO and relating directly to the inventions claimed in the Patents, as described in the attached Schedule 1 Part B.
Licence Rights[16]	The licence rights described in Schedule 2.
[Milestones][17]	[The milestones specified in Schedule 3.]
Negotiation Period	The [three (3)][18] month period starting on the date on which the Company gives the Option Notice to the RPO in accordance with Clause 2.4, subject to any earlier termination of this Agreement in accordance with Clause 5.
Option	The exclusive option described in Clause 2.1.
Option Notice	Has the meaning given in Clause 2.4.
Patents	Any and all of the patents and patent applications referred to in Schedule 1 Part A, including any continuations, continuations in part, extensions, reissues, divisions, and any patents, [supplementary protection certificates] and similar rights that derive priority from any of the foregoing.
Territory	[●][19].

2. Option

2.1. *EITHER*[20] [Conditional upon the Company achieving all of the Milestones during the Exclusivity Period, and in consideration of the sum of one Euro (€1) now paid by the Company to the RPO,] *OR* [In consideration of the sum of one Euro (€1) now paid by the Company to the RPO,] the RPO hereby grants to the Company an exclusive option, during the Exclusivity Period and subject to the provisions of this Agreement, to negotiate a separate, written licence agreement under which the Company would be granted the Licence Rights under the Patents and the Know-how in the Field and in the Territory.

2.2. [The Company shall use reasonable endeavours to achieve all of the Milestones prior to the expiry of the Exclusivity Period.][21]

2.3. Subject to the provisions of this Agreement, the RPO agrees that during the Exclusivity Period it will not grant to any third party any licence under the Patents and the Know-how for commercial purposes in the Field and in the Territory.

2.4. *EITHER*[22] [If the Company achieves all of the Milestones during the Exclusivity Period and wishes to exercise the Option, the Company shall give written notice thereof (the "**Option Notice**") to the RPO prior to the expiry of the Exclusivity Period, together with reasonable evidence to verify that all of the Milestones have been achieved.] *OR* [If the Company wishes to exercise the Option, the Company shall give written notice thereof (the "**Option Notice**") to the RPO prior to the expiry of the Exclusivity Period.]

2.5. If the Company exercises the Option prior to the expiry of the Exclusivity Period in accordance with Clause 2.4, the RPO and the Company shall negotiate in good faith, for a period not to exceed the expiry of the Negotiation Period, the terms of a separate, written licence agreement under which the Company would be granted the Licence Rights under the Patents and the Know-how in the Field and in the Territory. If the Parties agree the terms of such licence agreement during the Negotiation Period, the RPO and the Company shall promptly execute a written licence agreement on such terms.

2.6. *EITHER*[23] [If (a) the Company does not achieve all of the Milestones during the Exclusivity Period, or (b) the Company achieves all of the Milestones during the Exclusivity Period but fails to exercise the Option in accordance with Clause 2.4 during the Exclusivity Period, or (c) the Company exercises the Option in accordance with Clause 2.4 but the Parties are unable to agree the terms of a separate, written licence agreement during the Negotiation Period, despite negotiating in good faith, the Option will in each case lapse and this Agreement shall terminate by expiry.] *OR* [If (a) the Company fails to exercise the Option in accordance with Clause 2.4 during the Exclusivity Period, or (b) the Company exercises the Option in accordance with Clause 2.4 but the Parties are unable to agree the terms of a separate, written licence agreement during the Negotiation Period, despite negotiating in good faith, the Option will in each case lapse and this Agreement shall terminate by expiry.]

2.7. For the avoidance of doubt, during the Exclusivity Period and the Negotiation Period, the RPO reserves for itself and its collaborators the [exclusive,] irrevocable, worldwide, royalty-free right to use the Patents and the Know-how for the purposes of research that is not directed to the development of commercial products and services, publication and teaching[24].

3. No warranty[25]

3.1. The Company acknowledges and agrees that:

(a) the inventions claimed in the Patents, and the Know-how, are at an early stage of development. Accordingly, specific results cannot be guaranteed and any results, materials, information and other items, including the Patents and the Know-how, (together, the "**Delivered Items**") provided under this Agreement are provided to the Company 'as is' and without any express or implied warranties, representations or undertakings. As examples, but without limiting the foregoing, the RPO does not give any warranty that the Delivered Items are of merchantable or satisfactory quality, are fit for any particular purpose, comply with any sample or description, nor are viable, uncontaminated, safe or non-toxic, accurate, up to date or complete; and

(b) the RPO has not performed any searches or investigations into the existence of any third-party rights that may affect any of the Patents or Know-how.

4. Confidentiality obligations

4.1. Each Party (the "**Receiving Party**") undertakes from the Commencement Date:

(a) to maintain as secret and confidential all Confidential Information obtained directly or indirectly from the other Party (a "**Disclosing Party**") in the course of or in anticipation of this Agreement and to respect the Disclosing Party's rights therein. For the avoidance of doubt, the Parties agree that the Patents and the Know-how shall form part of the RPO's Confidential Information;

(b) to use such Confidential Information only for the purposes of this Agreement;

(c) to disclose such Confidential Information only to those of its employees (if any) to whom and to the extent that such disclosure is reasonably necessary for the purposes of this Agreement; and

(d) to ensure that all those to whom disclosure of, or access to, such Confidential Information has been given, including its employees (if any), 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.

4.2. The provisions of Clause 4.1 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 employees.

4.3. 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:

(a) 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

(b) permit the Disclosing Party to make representations (written or otherwise) in respect of the disclosure and/or confidential treatment of the Confidential Information.

5. Termination

5.1. This Agreement shall come into effect on the Commencement Date and, subject to any earlier termination in accordance with this Clause 5, shall continue in force until the expiry of either the Exclusivity Period or, if the Company exercises the Option in accordance with Clause 2.4, the Negotiation Period. Upon expiry of the Exclusivity Period or the Negotiation Period (as applicable), this Agreement, and the Option, shall terminate by expiry.

5.2. The Company may terminate this Agreement at any time on giving no less than [sixty (60)][26] days' prior written notice to the RPO.

5.3. Either Party may terminate this Agreement at any time by notice in writing to the other Party (the "**Other Party**"), such termination to take effect as specified in the notice:

(a) if the Other Party is in material breach of this Agreement; or

(b) if: (A) the Other Party becomes insolvent or unable to pay its debts as and when they become due; (B) an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction); (C) a liquidator, examiner, receiver, receiver manager or trustee is appointed in respect of the whole or any part of the Other Party's assets or business; (D) the Other Party makes any composition with its creditors; (E) the Other Party ceases to continue its business; or (F) as a result of debt and/or maladministration the Other Party takes or suffers any similar or analogous action.

5.4. 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 any other Party.

5.5. Upon termination of this Agreement for any reason, including without limitation upon termination by expiry under Clause 5.1:

(a) the Company shall immediately cease to make any further use of any Confidential Information provided by the RPO under this Agreement and shall, at the RPO's option return or destroy any documents or other materials under its possession or control recording any such Confidential Information;

(b) the Option shall lapse, and in such circumstances, the RPO shall be free to exploit the Patents and the Know-how without restriction or further obligation to the Company; and

(c) neither Party shall be under any further obligation to any other save that obligations under Clauses 4, 5.5 and 6 of this Agreement shall remain in force.

6. General[27]

6.1. Neither Party shall have any liability or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement that result from circumstances beyond the reasonable control of that Party, including labour disputes involving that Party. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.

6.2. This Agreement may only be amended in writing signed by the Parties or by duly authorised representatives of each of them.

6.3. Subject to Clause 6.4, neither Party shall assign, mortgage, charge or otherwise transfer any of its rights or obligations under this Agreement, without the prior written consent of the other Party.

6.4. The RPO may assign all its rights and obligations under this Agreement, together with its rights in the Patents and the Know-how, to any company or other organisation to which it transfers all or substantially all of its assets or business [in the Field], provided that the assignee undertakes to the Company to be bound by and perform the obligations of the RPO under this Agreement.

6.5. Neither Party shall act or describe itself as the agent of the other, nor shall it represent that it has authority to make any commitments on the other's behalf. Without limiting the scope of the preceding sentence, the Company acknowledges and agrees that it is not authorised to make any statements on behalf of the RPO, including any statements that might be the subject of financial regulation.

6.6. Any notice to be given under this Agreement shall be in writing and shall be sent by post to the address of the relevant Party set out at the head of this Agreement, or to such other address as that Party may from time to time notify to the other Party in accordance with this Clause 6.6. Notices sent as set out in the preceding sentence shall be deemed to have been received three (3) working days after the day of posting.

6.7. 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 the Ireland. Notwithstanding the preceding sentence, before commencing any litigation, each Party shall consider in good faith whether it would be reasonable in the circumstances for the Parties to agree to pursue any alternative dispute resolution processes, including mediation in accordance with the Mediation Act 2017. For the avoidance of doubt, however, nothing in this Agreement shall prevent or delay a Party from seeking an interim injunction.

6.8. 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.

6.9. Neither Party shall make any press or other public announcement concerning any aspect of this Agreement, or make any use of the name of the other Party in connection with or in consequence of this Agreement, without the prior written consent of such other Party.

6.10. This Agreement, including its Schedules, sets out the entire agreement between the Parties relating to its subject matter and supersedes all prior oral or written agreements, arrangements or understandings between them relating to such subject matter. The Parties acknowledge that they are not relying on any representation, agreement, term or condition which is not set out in this Agreement.

Agreed by the Parties through their authorised signatories:

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

Schedule 1[28]

Part A: Patents

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

Part B: Know-how

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

Schedule 2[29]

Licence Rights

[Insert key points to be incorporated in the licence agreement such as:
- Intended exclusivity.
- Duration.
- Field.
- Territory.
- Permitted use (e.g. manufacture, develop, sell or supply).
- Ability to grant sub-licences.
- Warranties or indemnities to be offered.]

[Schedule 3[30]

Milestones

[Insert details of any Milestones that the Company needs to satisfy before the end of the Exclusivity Period in order to be able to exercise the Option, such as:

(a) [The preparation, and the delivery to and the approval by the RPO, of the Business Plan; and]

(b) [The delivery to the RPO of at least [one (1)] Expression of Interest Letter; and]

(c) [Set out here any other conditions that the Company must satisfy before the RPO will negotiate the licence agreement with the Company.]]

Drafting Notes:

[1] This is a template option agreement drafted to be used between an RPO and one of its very early-stage, pre-investment spin-out companies. It assumes that the spin-out company has not "got off the ground" at the time of signing and would like to be granted a limited period of exclusivity over the relevant IP (i.e. patents and know-how) during which it can explore whether there may be a business case to further develop and exploit the IP safe in the knowledge that the RPO will not do a deal with a third party in respect of that IP during that period. At the end of (or during) the period of exclusivity, the spin-out company can choose whether or not to exercise its "option" over the IP in order to trigger a negotiation of a licence agreement under which the RPO would grant the spin-out company rights to use the relevant IP in a specified Field and Territory. The template includes optional provisions depending on whether the spin-out company would be required to satisfy a series of milestones (such as preparing a business plan acceptable to the RPO) during its period of exclusivity in order to be able to exercise the option.

[2] Users of this template should note that the authors have not drafted it to take account of the individual requirements of Irish third level educational institutions which might apply. Users are advised to seek out and address by additional provisions any peculiarities or requirements of a relevant institution.

[3] Users should note that there are no payment provisions in this template (except the exchange of €1 under clause 2.1 to avoid any lack of consideration arguments). The thinking behind this is that the spin-out company would be very early-stage and pre-investment and probably would not have the resources to pay for the option. However, this example of support provided by the RPO should be recognised when e.g. negotiations are being held about what level of shareholding the RPO should take in the spin-out company. For further discussion on this point, the user should refer to the KTI Practical Guide to Spin-Out Company Agreements. Users should also be alert to state aid issues that might be raised if the spin-out company does not pay market value for the benefits it receives and, for further information on this topic, users can also refer to the KTI Practical Guide to Understanding EU State Aid Rules in Research, Development and Innovation with RPOs

However, if users wish to build in payment provisions to this template, example wording can be found in the other KTI Model Option Agreements.

[4] This should be the date on which the last party signs and should be inserted (here and on the covering page) by the last signatory on that date.

[5] Insert (here and on the covering page) the full name of the RPO, the statute or charter under which it was incorporated or established, and its principal/registered address. Individual RPOs will have their own legal formalities which will need to be completed to bind the RPO.

[6] Insert (here and also on the covering page) the full name of the spin-out company. The spin-out company's registered number and registered address also need to be inserted here. This wording assumes that the spin-out company will be a limited company (registered under Part 2 of the Companies Act 2014).

[7] Insert a general description of what the intellectual property rights relate to, for instance the relevant therapeutic area.

[8] This template is drafted to refer to patents and know-how. However, it could be amended to refer to "technology" if a wider range of intellectual property is involved (such as, for example, copyright in software).

[9] As mentioned above, this template includes optional provisions depending on whether the spin-out company would be required to satisfy a series of milestones in order to be able to exercise the option. If milestones are to be included, the square brackets around this wording should be deleted. If milestones are not part of the arrangements, the wording in square brackets instead should be deleted.

[10] See the previous comment.

[11] This wording has been included as a placeholder, in case milestones are included and the preparation of a Business Plan is one of the milestones that the spin-out company must satisfy in order to exercise the option. If that is the case, this definition should be completed as appropriate (i.e. to ensure that the Business Plan covers the

topics that the RPO requires) and the square brackets around the definition should be deleted. If milestones do not form part of the arrangements, this definition should be deleted entirely.

[12] This is the date on which the option (and the agreement) comes into force.

[13] The exclusivity period, once settled, should be taken out of square brackets.

[14] This wording has been included as a placeholder, in case milestones are included and the receipt of a letter expressing interest in investing in the spin-out company is one of the milestones that the spin-out company must satisfy in order to exercise the option. If that is the case, this definition should be completed as appropriate (i.e. to ensure that the correct level of minimum investment is specified) and the square brackets around the definition should be deleted. If milestones do not form part of the arrangements, this definition should be deleted entirely.

[15] This refers to the field in which the proposed licence would be granted and assumes that the licence would be limited to a particular technical field or field of use.

[16] Depending upon the arrangement reached with the spin-out company, the licence rights would address issues such as permitted uses, duration, exclusivity, the right to sub-license and the extent of rights reserved to the RPO.

[17] If milestones are to be included, this definition should be taken out of square brackets. If they are not to form part of the arrangements, this definition should be deleted entirely.

[18] The negotiation period, once settled, should be taken out of square brackets.

[19] Insert the countries in which the spin-out company would be granted a licence to use the patents and the know-how.

[20] As mentioned above, this template includes optional provisions depending on whether the spin-out company would be required to satisfy a series of milestones in order to exercise the option. If milestones are included, the first alternative wording should be selected, taken out of square brackets, and the second alternative wording deleted. If milestones do not form part of the arrangements, the second alternative wording should be selected, taken out of square brackets, and the first alternative wording deleted.

[21] This clause should only be included if milestones form part of the arrangements. If they do, the square brackets around the clause should be deleted. If they do not, the clause should be deleted entirely.

[22] As mentioned above, this template includes optional provisions depending on whether the spin-out company would be required to satisfy a series of milestones in order to exercise the option. If milestones are included, the first alternative wording should be selected, taken out of square brackets, and the second alternative wording deleted. If milestones do not form part of the arrangements, the second alternative wording should be selected, taken out of square brackets, and the first alternative wording deleted.

[23] As mentioned above, this template includes optional provisions depending on whether the spin-out company would be required to satisfy a series of milestones in order to exercise the option. If milestones are included, the first alternative wording should be selected, taken out of square brackets, and the second alternative wording deleted. If milestones do not form part of the arrangements, the second alternative wording should be selected, taken out of square brackets, and the first alternative wording deleted.

[24] This will be of central importance to the RPO. If there is a concern that the technology may be compromised by a publication, the spin-out company may ask the RPO to consider agreeing to delay publication for the duration of the Exclusivity Period.

[25] As drafted, this clause tries to minimise the RPO’s exposure. It reflects the RPO’s limited ability to provide comprehensive warranties or other guarantees in support of the technology.

[26] The appropriate termination period, once settled, should be taken out of square brackets.

[27] Parties may wish to seek advice whether the option agreement raises any competition law issues, e.g. under Article 101(1) of the Treaty on the Functioning of the European Union (TFEU), Section 4(1) of the Competition

Act 2002 (as amended), or the Technology Transfer Block Exemption Regulation (TTBER). For further information, the user should see the section which provides further detail in the KTI Practical Guide entitled "Licence Agreements".

[28] This Schedule could be amended to describe a broader, or different, range of intellectual property if necessary.

[29] This schedule needs to be tailored to the particular circumstances as appropriate.

[30] As mentioned, this template includes optional provisions depending on whether the spin-out company would be required to satisfy a series of milestones in order to exercise the option. If milestones are included, this schedule should be completed as appropriate to clearly set out what the milestones are. If milestones are not part of the arrangements, this schedule (3) should be deleted.

KTI Model Exclusive Licence Agreement to a Spin-out Company

Dated ____________________________________20[●]

(1) [*Full legal name of the RPO*]

and

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

MODEL EXCLUSIVE LICENCE AGREEMENT TO A SPIN-OUT COMPANY

MODEL EXCLUSIVE LICENCE AGREEMENT TO A SPIN-OUT COMPANY [1] [2] [3] [4]

This Agreement dated ____ 20[●][5] 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 [●][6]; and

(2) **[●] [LIMITED][INC.]** (the "**Licensee**"), [a company incorporated in [●] under registration number [●],] whose [principal place of business *or* registered address] is at [●][7].

Background:

A. The RPO has developed certain technology and owns certain intellectual property rights relating to [●][8], including the IP and the Know-how.

B. The Licensee was incorporated on [●][9] and is a spin-out company of the RPO.

C. The Licensee wishes to acquire rights under the IP and to use the Know-how for the development and commercialisation of Licensed Products in the Field and in the Territory, all in accordance with the provisions of this Agreement.

The Parties agree as follows:

1. Definitions

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

Affiliate	In relation to a Party, means any entity or person that Controls, is Controlled by, or is under common Control with that Party.
[Assignment Fee][10]	[Has the meaning given in Clause 6.6(b).]
Bribery Event	A breach by a Party and/or its Affiliates and/or their respective officers, directors, employees and representatives of the Criminal Justice (Corruption Offences) Act 2018 and/or any corresponding anti-bribery or anti-corruption legislation in the Territory.
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.
Commencement Date	[●][11].
Confidential Information	(a) All IP and Know-how; and (b) All other technical or commercial information that: (i) 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; (ii) 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 (iii) any copy of any of the foregoing.

Control	Direct or indirect beneficial ownership of 50% (or, outside a Party's home territory, such lesser percentage as is the maximum, permitted level of foreign investment) or more of the share capital, stock or other participating interest carrying the right to vote or to distribution of profits of that Party, as the case may be.
Diligent and Reasonable Efforts	Exerting such efforts and employing such resources as would normally be exerted or employed by a reasonable third party company for a product of similar market potential at a similar stage of its product life, when utilising sound and reasonable scientific and business practice and judgement in order to develop the product in a timely manner and maximise the economic return to the Parties from its commercialisation.
Disclosing Party	Has the meaning given in Clause 3.
Field	[●][12].
[Investment][13]	[Actual receipt by the Licensee of at least €[●] as the purchase price for a subscription of shares in the Licensee [in a single transaction].]
IP	Any and all of the intellectual property rights and relevant applications for intellectual property rights referred to in Schedule 1 Part A, (including, with respect to any patents, any continuations, continuations in part, extensions, reissues, divisions, and any supplementary protection certificates and similar rights that derive priority from the foregoing).
Know-how	Technical information in the Field developed by the RPO and relating directly to the inventions claimed in the IP, as described in the attached Schedule 1 Part B.
Licensed Products	[Any and all products that are manufactured, sold or otherwise supplied by the Licensee or its sub-licensee(s) (including any Affiliate(s) of the Licensee) and which (a) are within any Valid Claim of the IP; and/or (b) incorporate, or their development makes use of, any of the Know-how.]
[Net Receipts[14]]	[The amount of any payment (excluding value added tax), and the value of any non-monetary receipt, obtained by, or due to, the Licensee or its Affiliate(s), in relation to the development or sub-licensing (including the grant of any option over a sub-licence) of any of the IP and Know-how, and including any of the following: (a) up-front, milestone (whether at the stage of development, marketing or otherwise), success, bonus, maintenance and periodic (including annual) payments and royalty payments due under any sub-licence agreement; (b) payments in respect of the funding of research or development activities related to any Licensed Product, to the extent that such payments exceed a reasonable level of payment for such activities; (c) where any sub-licence is to be granted under cross-licensing arrangements, the value of any third party licence obtained under such arrangements; (d) any premium paid over the fair market value of shares, options or other securities in respect of any of the share capital of the Licensee or its Affiliate(s) (such fair market value to be determined on the assumption that the RPO had not granted, nor agreed to grant, any rights to the Licensee in respect of any of the IP and Know-how); (e) any loan, guarantee or other financial benefit made or given other than on normal market terms; and (f) any shares, options or other securities obtained from a third party.]

[Net Sales Value[15]]	[The invoiced price of Licensed Products sold or otherwise supplied by the Licensee or its Affiliate(s) to independent third parties in arm's length transactions exclusively for money or, where the sale or other supply is not at arm's length, the price that would have been so invoiced if it had been at arm's length, after deduction of all documented: (a) normal trade discounts actually granted and any credits actually given for rejected or returned Licensed Products; (b) costs of packaging, insurance, carriage and freight, provided in each case that the amounts are separately charged on the relevant invoice; (c) Value Added Tax or other sales tax; and (d) import duties or similar applicable government levies, provided that such deductions do not exceed reasonable and customary amounts in the markets in which such sales or other supplies occurred[16]. Sales and other supplies between any of the Licensee, its Affiliates and sub-licensees shall not be considered for the purposes of this definition unless there is no subsequent sale or other supply to a person who is not the Licensee, its Affiliate or sub-licensee.]
[Option][17]	[Has the meaning given in Clause 6.6(a).]
Parties	The RPO and the Licensee; and "**Party**" shall mean either of them.
Principal Investigator	[●][18].
Receiving Party	Has the meaning given in Clause 3.
Territory	[●][19] [20].
Valid Claim	A claim of a patent or patent application that has not expired or been held invalid or unenforceable by a court of competent jurisdiction in a final and non-appealable judgment.

2. Grant of rights

2.1 *Licences.* The RPO hereby grants to the Licensee, subject to the provisions of this Agreement:

(a) an exclusive[21] licence to use the IP to develop, manufacture, have manufactured, use and sell or otherwise supply Licensed Products only in the Field in the Territory[22]; and

(b) a non-exclusive[23] licence to use the Know-how to develop, manufacture, have manufactured, use and sell or otherwise supply Licensed Products only in the Field in the Territory.

2.2 *Formal licences[24].* The Parties shall execute such formal licences as may be necessary or appropriate for registration with intellectual property offices and other relevant authorities in particular territories. In the event of any conflict in meaning between any such licence and the provisions of this Agreement, the provisions of this Agreement shall prevail. Prior to the execution of the formal licence(s) (if any) referred to in this Clause 2.2 the Parties shall so far as possible have the same rights and obligations towards one another as if such licence(s) had been granted. The Parties shall use reasonable endeavours to ensure that, to the extent permitted by the relevant authorities, this Agreement shall not form part of any public record.

2.3 *Sub-licensing*.

(a) The Licensee shall be entitled to grant sub-licences of its rights under this Agreement to any of its Affiliates without the need for any further consent from the RPO, provided that the Licensee complies with the conditions set out in paragraph (i) to (v) of Clause 2.3(b) in respect of any such sub-licence.

(b) Subject to Clause 2.3(a), the Licensee shall not be entitled to grant sub-licences of its rights under this Agreement, except with the prior written consent of the RPO, which consent shall not be unreasonably withheld. 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:

(i) 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;

(ii) the sub-licence shall not permit the sub-licensee to further sub-license any of its rights to the IP and/or the Know-how;

(iii) the sub-licence shall terminate automatically on the termination of this Agreement for any reason;

(iv) within thirty (30) days of the grant of any sub-licence the Licensee shall provide to the RPO a true copy of it; and

(v) 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 the Licensee shall indemnify the RPO against any losses, damages, costs, claims or expenses which are awarded against or suffered by the RPO as a result of any such breach by the sub-licensee.

2.4 Reservation of rights.

(a) The RPO reserves for itself and its Affiliates the [exclusive], irrevocable, worldwide, royalty-free right to use the Know-how and the IP in the Field for the purposes of research that is not directed to the development of commercial products and services, publication and teaching.

(b) Except for the licences expressly granted by Clause 2.1, the RPO reserves all its rights. Without prejudice to the generality of the foregoing, the RPO grants no rights to any intellectual property other than the IP and the Know-how, and reserves all rights under the IP and the Know-how outside the Field.

2.5 Provision of Know-how.

(a) Within thirty (30) days of the Commencement Date, the Parties shall agree in writing the arrangements by which the RPO (through the Principal Investigator) shall make available the Know-how to the Licensee.

(b) The RPO shall not have any obligation to provide any technical support in relation to any of the IP or the Know-how. However, if the Licensee wishes the RPO to provide any such support, the Licensee shall give the RPO written notice thereof. The RPO shall respond to such notice within fourteen (14) days, or within such other period as the Parties may agree to be reasonable in the circumstances, by confirming in writing whether or not it is willing and able to provide such support on reasonable commercial terms to be agreed between the Parties in writing.

3. Confidentiality

3.1 Confidentiality obligations. Each Party (the "**Receiving Party**") undertakes from the Commencement Date:

(a) 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;

(b) to use such Confidential Information only for the purposes of this Agreement;

(c) to disclose such Confidential Information only to those of its employees, contractors 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; and

(d) to ensure that all those to whom disclosure of or access to such Confidential Information has been given, including its officers, directors, employees and professional advisers, comply with the provisions of this Agreement, and the Receiving Party shall be liable to the Disclosing Party for any breach of this Agreement by any of the foregoing.

3.2 *Exceptions to obligations.* The provisions of Clause 3.1 shall not apply to Confidential Information which the Receiving Party can demonstrate by reasonable, written evidence:

(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 RPO 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, employees, Affiliates or sub-licensees.

3.3 *Disclosure in accordance with legal obligations.* To the extent that the Receiving Party is required to disclose any of the Disclosing Party's Confidential Information by order of a court or other public body that has jurisdiction over it or under other legal obligations, such as under a *bona fide* freedom of information request, it may do so, provided that, before making such a disclosure the Receiving Party shall, unless the circumstances prohibit:

(a) 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

(b) permit the Disclosing Party to make representations (written or otherwise) in respect of the disclosure and/or confidential treatment of the Confidential Information.

4. Additional Licensee obligations

4.1 *Compliance with applicable laws, etc.* The Licensee shall in exercising its rights under this Agreement:

(a) comply with all applicable laws, regulations and other similar instruments in the Territory and shall at all times be solely liable and responsible for such due observance and performance; and

(b) permit, and shall use its best endeavours to obtain permission for, the RPO at all reasonable times and on reasonable notice to enter any place used for the development, manufacture, use or storage of the Licensed Products to inspect the methods of development, manufacture, use or storage[25].

4.2 *Licensee restrictions.* The Licensee shall not, and shall ensure that its Affiliates and sub-licensees do not:

(a) use the name, any adaptation of the name, any logo, trademark or other device of the RPO, in any advertising, promotional or sales materials without prior written consent obtained from the RPO in each case;

(b) do, or omit to do, anything to diminish the rights of the RPO in the IP or the Know-how or impair any registration of the IP;

(c) use any child labour in the manufacture or distribution of the Licensed Products, and where third parties are to manufacture or distribute those Licensed Products the Licensee shall procure from those third parties written confirmation that they shall not use any child labour in the manufacture or distribution of the Licensed Products; or

(d) engage in conduct in any Territory that would reasonably be construed as a Bribery Event.

5. Payments[26] [27] [28]

5.1 [*Initial payments*. Within thirty (30) days of the Commencement Date, the Licensee shall:

(a) pay to the RPO the non-refundable[, non-deductible][29] lump-sum of [●] Euro (€[●])[30] [*or* which shall be an advance against royalties due under Clauses 5.3 and 5.4]; and

(b) reimburse all of the costs and expenses incurred by the RPO in respect of drafting, applying for and prosecuting the IP prior to the Commencement Date.]

5.2 [*Milestone payments.* Upon achievement of the each of the milestone events set out in the following table, the Licensee shall pay to the RPO the amount(s) set out next to such milestone event in the table:]

Milestone event[31]	*Amount to be paid*

5.3 [*Royalties on Net Sales Value*[32] [33]. The Licensee shall pay to the RPO a royalty of [●] per cent ([●]%) of the Net Sales Value of all Licensed Products, or any part thereof, sold or otherwise supplied by Licensee or its Affiliates.]

5.4 [*Royalties on Net Receipts*[34]*.* The Licensee shall pay to the RPO a royalty of [●] per cent ([●]%) of Net Receipts.]

5.5 [*Annual licence fees*[35]. On each anniversary of the Commencement Date (or such other date(s) as may be agreed to by the Parties in writing), the Licensee shall pay to the RPO the annual licence fee of [●] Euro (€[●]). If the Licensee fails to pay any such amount by such date, the RPO may in its sole and absolute discretion either (a) convert the exclusive licence granted under Clause 2.1 into a non-exclusive licence, or (b) elect to treat such non-payment as a material breach under Clause 9.2(b)(i); in either case by issuing a written notice to the Licensee to inform the Licensee of its decision.]

5.6 [*Non-monetary consideration; referral to expert*[36]. Where the Licensee accepts Net Receipts in the form of shares in a sub-licensee or other non-monetary receipts, the Licensee shall pay the royalty due under this Agreement to the RPO on such Net Receipts by determining the equivalent cash value of such shares or other non-monetary receipts. If the Parties disagree as to the cash value of such shares or non-monetary receipts, such disagreement shall be referred to an independent expert who shall be appointed and act in accordance with the provisions of Schedule 2 and whose decision shall be final and binding on the Parties.]

5.7 [*Combination Products*[37]*.* If any Licensed Products are incorporated in any other product ("**Combination Product**") supplied by the Licensee and the Licensed Product is not priced separately from the Combination Product, the Net Sales Value of such Licensed Product shall be deemed to be the fair market value of the Licensed Product in the country of sale when sold separately or, where the products are not sold separately, that proportion of the Net Sales Value of the Combination Product which is attributable to the Licensed Product, comparing the [manufacturing cost] of the Licensed Product with that of the Combination Product, as in the following formula: Net Sales Value of Licensed Product = ([manufacturing cost] of Licensed Product divided by total [manufacturing cost] of Combination Product) x Net Sales Value of Combination Product.]

5.8 [*Minimum royalties*[38]*.* If the royalties payable under Clause 5.3 and Clause 5.4 are less than [●] Euro (€[●]) ("**Minimum Royalty**") in any calendar year, the Licensee shall pay to the RPO the amount by which such royalties are less than the Minimum Royalty within sixty (60) days of the end of such calendar year, failing which the RPO shall be entitled to terminate this Agreement and all licences granted under this Agreement by notice in writing to the Licensee given at any time after the expiry of the said sixty (60) day period. If this Agreement ends on any day other than the end of a calendar year, the Minimum Royalty due for that year shall be reduced pro-rata, i.e. the minimum amount due shall be the Minimum Royalty for a complete year multiplied by the number of days of the final calendar year during which this Agreement was in force, and divided by three hundred and sixty five (365) days.]

5.9 [*Royalties to third parties*[39]*.* If, during the continuation of this Agreement, the Licensee considers it necessary to obtain a licence from any third party ("**Third Party Licence**") in order to avoid infringing such third party's intellectual property rights in the course of manufacture or sale of Licensed Products, the royalties paid under the Third Party Licence shall be treated as a deductible item when calculating Net Sales Value provided that the amount of royalty payable by the Licensee to the RPO in any quarterly period shall not be reduced by more than 50% of the amount which would have been payable in the absence of this Clause. The deductions referred to in this Clause shall only be made where the infringement of the third party intellectual property rights arises from the use of the IP in accordance with the provisions of this Agreement, and not from the use of any other intellectual property that the Licensee chooses to use in the manufacture or sale of any Licensed Product.]

5.10 [*Payment frequency*[40]. Royalties due under this Agreement shall be paid within thirty (30) days of the end of each quarter ending on 31 March, 30 June, 30 September and 31 December, in respect of sales or other supplies of Licensed Products made and Net Receipts generated during such quarter and within thirty (30) days of the termination of this Agreement.]

5.11 *Payment terms.* All sums due under this Agreement:

(a) are exclusive of value added tax which where applicable will be paid by the Licensee to the RPO in addition;

(b) shall be paid in Euro in cash by transferring an amount in aggregate to the following account[41] : number [●], sort code [●], account name [●], held with [●] Bank plc, [*address*], and in the case of sales or sub-licence income received by the Licensee in a currency other than Euro, the royalty shall be calculated in the other currency and then converted into equivalent Euro at the buying rate of such other currency as quoted by [●] Bank plc in Dublin as at the close of business on the last business day of the quarterly period with respect to which the payment is made;

(c) shall be made without deduction of income tax or other taxes, charges or duties that may be imposed, except insofar as the Licensee is required to deduct the same to comply with applicable laws. The Parties shall cooperate and take all steps reasonably and lawfully available to them, at the reasonable expense of the RPO, to avoid deducting such taxes and to obtain double taxation relief. If the Licensee is required to make any such deduction it shall provide the RPO with such certificates or other documents as it can reasonably obtain to enable the RPO to obtain appropriate relief from double taxation of the payment in question; and

(d) shall be made by the due date, failing which the RPO may charge interest on any outstanding amount on a daily basis at a rate equivalent to [●] per cent ([●]%) above the [●] Bank plc base lending rate then in force in Dublin[42].

5.12 *Exchange controls.* If at any time during the continuation of this Agreement the Licensee is prohibited from making any of the payments required hereunder by a governmental authority in any country, then within the prescribed period for making the said payments in the appropriate manner, the Licensee shall use its best endeavours to secure from the proper authority in the relevant country permission to make the said payments and shall make them within seven (7) days of receiving such permission. If such permission is not received within thirty (30) days of the Licensee making a request for such permission then, at the option of the RPO, the Licensee shall deposit the royalty payments due in the currency of the relevant country either in a bank account designated by the RPO within such country or such royalty payments shall be made to an associated company of the RPO designated by the RPO and having offices in the relevant country designated by the RPO.

5.13 [*Royalty statements*[43]. The Licensee shall send to the RPO at the same time as each royalty payment is made in accordance with Clause 5.3 or Clause 5.4 a statement setting out, in respect of each territory or region in which Licensed Products are sold or supplied, the types of Licensed Product sold or supplied, the quantity of each type sold or supplied, and the total Net Sales Value, and the total Net Receipts in respect of each type and sub-licensee, expressed both in local currency and Euro and showing the conversion rates used, during the period to which the royalty payment relates.]

5.14 [*Records*[44].

(a) The Licensee shall keep at its normal place of business detailed and up to date records and accounts showing (i) the quantity, description and value of Licensed Products sold or otherwise supplied by it, and (ii) the amount of sub-licensing revenues received by it in respect of Licensed Products, in each case on a country by country basis, and being sufficient to ascertain the payments due under this Agreement.

(b) The Licensee shall make such records and accounts available, on reasonable notice, for inspection during business hours by an [independent chartered accountant] nominated by the RPO for the purpose of verifying the accuracy of any statement or report given by the Licensee to the RPO under this Clause 5. The [accountant] shall be required to keep confidential all information learnt during any such inspection, and to disclose to the RPO only such details as may be necessary to report on the accuracy of the Licensee's statement or report. The RPO shall be responsible for the accountant's charges unless the [accountant] certifies that there is an inaccuracy of more than [five per cent (5%)] in any royalty statement, in which case the Licensee shall pay his charges in respect of that inspection.

(c) The Licensee shall ensure that the RPO has the same rights as those set out in this Clause 5.14 in respect of any person that is sub-licensed under the IP or Know-how pursuant to this Agreement.]

6. Commercialisation[45]

6.1 *General diligence.* The Licensee shall be exclusively responsible for the technical and commercial development and manufacture of Licensed Products and shall use Diligent and Reasonable Efforts to develop and commercially exploit Licensed Products to the maximum extent in the Field and throughout the Territory.

6.2 *Annual Report.*

(a) Without prejudice to the generality of the Licensee's obligations under Clause 6.1, the Licensee shall provide at least annually to the RPO an updated, written statement (the "**Annual Report**") that shall set out the past, current and projected activities taken or planned to be taken by the Licensee and its Affiliates and sub-licensees (if any) to bring Licensed Products to market and maximise the sale of Licensed Products in the Field throughout the Territory, including whether and when any milestone events referred to in this Agreement have been performed or are likely to be performed by the Licensee.

(b) The RPO's receipt or approval of any Annual Report shall not be taken to waive or qualify the Licensee's obligations under Clause 6.1.

6.3 *Referral to expert[46].* If the RPO considers at any time during the period of this Agreement that the Licensee has without legitimate reason failed to comply with its obligations under Clause 6.1, the RPO shall be entitled to refer to an independent expert the following questions:

(a) whether the Licensee has complied with its obligations under Clause 6.1; and if not

(b) what specific action the Licensee should have taken ("**Specific Action**") in order to have so complied.

6.4 *Appointment of expert.* The independent expert shall be appointed in accordance with the provisions of Schedule 2 and his decision shall be final and binding on the Parties.

6.5 *Consequences of expert's decision.* If the expert determines that the Licensee has failed to comply with its obligations under Clause 6.1, and if the Licensee fails to take the Specific Action within six (6) months of the expert giving his decision in accordance with Schedule 2, the RPO shall be entitled, by giving, at any time within three (3) months after the end of that six (6) month period, not less than three (3) months' notice to terminate this Agreement and the licences granted to the Licensee under Clause 2.1.

6.6 [*Possible assignment of the IP to the Licensee.*[47]

(a) Conditional upon the Licensee achieving each of the milestone events set out in the following table [by the relevant date set out next to such milestone events][48] (together, the "**Pre-Conditions**"), the Licensee shall have the option (the "**Option**") to have the RPO's rights in the IP assigned to the Licensee:

Milestone event[49]	*Date by which milestone event must be achieved[50]*
[Receipt by the Licensee of the Investment]	[●]

(b) If the Licensee achieves all of the Pre-Conditions [by the dates specified in the table set out in Clause 6.6(a)] and wishes to exercise the Option, the Licensee, within [●] days of the date on which the Licensee achieve all of the Pre-Conditions (the "**Option Period**"), shall:

(i) give to the RPO written notice of its wish to exercise the Option (the "**Exercise Notice**"), together with reasonable evidence to verify that all of the Pre-Conditions have been achieved; and

(ii) [pay to the RPO a lump-sum amount equal to [●] Euro (€[●]) *AND/OR* issue to the RPO [●] new, fully paid-up shares of €[●] each in the Licensee without charge to the RPO][51] (the "**Assignment Fee**") at the same time as sending the Exercise Notice.

(c) If the Licensee exercises the Option prior to the expiry of the Option Period in accordance with Clause 6.6(b), and subject to the RPO's receipt of the Assignment Fee in full, with effect from the date of the Exercise Notice:

(i) the RPO shall assign its rights in the IP to the Licensee;

(ii) the Licensee shall have a non-exclusive, royalty-free right to use the Know-how[52];

(iii) the Licensee shall grant to the RPO a non-exclusive, perpetual, irrevocable, worldwide, royalty-free and fully paid-up licence under the IP for the purposes of publication, teaching, and research that is not directed to the development of commercial products and services;

(iv) if the Licensee wishes to assign, or otherwise grant any rights in or to, the IP to any third party, the Licensee shall ensure that such third party (A) is bound by the RPO's rights set out in Clause 6.6(c)(iii), and (B) undertakes to ensure that any subsequent owners of the IP are likewise bound by those rights;[53]

(v) this Agreement shall terminate and, subject as provided in this Clause 6.6(c) and in Clause 9.3 and except in respect of any accrued rights, neither Party shall be under any further obligation to the other; and[54]

(vi) each Party shall do all acts, and execute all documents, as may be reasonably necessary to give full effect to the provisions of this Clause 6.6(c).

(d) If the Licensee does not achieve all of the Pre-Conditions [by the dates specified in the table set out in Clause 6.6(a)], or if the Licensee achieves all of the Pre-Conditions by the relevant dates but fails to exercise the Option prior to the expiry of the Option Period in accordance with Clause 6.6(b), the Option shall immediately lapse without further notice or action. In such circumstances, the RPO shall have no further obligation to assign its rights in the IP to the Licensee.]

7. Intellectual property[55]

7.1 [*Obtain and maintain the patents (if any) comprising the IP*[56] [57] *.* The Licensee shall at its own cost and expense:

(a) endeavour to obtain valid patents in the name of the RPO pursuant to each of the patent applications listed in Schedule 1 so as to secure the broadest monopoly reasonably available;

(b) co-operate with the RPO and its licensee(s) outside the Field (if any);

(c) consult with the RPO in relation to all changes to patent claims or specifications that would have the effect of reducing or limiting the extent of the patent coverage;

(d) ensure that the RPO shall receive copies of all correspondence to and from the relevant patent offices in respect of the patents, including copies of all documents generated in or with such correspondence; and

(e) pay all renewal fees in respect of the patents as and when due,

provided that if the Licensee wishes to abandon any such application or not to maintain any such patents (or to cease funding such application or patents) it shall give three (3) months' prior written notice to the RPO and on the expiry of such notice period the Licensee shall cease to be licensed under the patent application or patent identified in the notice.]

7.2 *Infringement of the IP[58].*

(a) Each Party shall inform the other Party promptly if it becomes aware of any infringement or potential infringement of any of the IP in the Field, and the Parties shall consult with each other to decide the best way to respond to such infringement.

(b) If the Parties fail to agree on a joint programme of action for responding to such infringement, including how the costs of any such action are to be borne and how any damages or other sums received from such action are to be distributed, then the Licensee shall be entitled to take action[59] against the third party at its sole expense, subject to the following provisions of this Clause 7.2.

(c) Before starting any legal action under Clause 7.2(b), the Licensee shall consult 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 should be conducted.

(d) If the alleged infringement is both within and outside the Field, the Parties shall also co-operate with the RPO's other licensees (if any) in relation to any such action.

(e) The Licensee shall reimburse the RPO for any reasonable expenses incurred in assisting it in such action. The Licensee shall pay the RPO royalties, in accordance with Clause 5, on any damages received from such action as if the amount of such damages after deduction of both Parties' reasonable expenses in relation to the action were Net Receipts[60].

(f) The RPO shall agree to be joined[61] in any suit to enforce such rights subject to being indemnified and secured in a reasonable manner as to any costs, damages, expenses or other liability and shall have the right to be separately represented by its own counsel at its own expense.

(g) If, within six (6) months of the Licensee first becoming aware of any potential infringement of the IP, the Licensee is unsuccessful in persuading the alleged infringer to desist or fails to initiate an infringement action, the RPO shall have the right, at its sole discretion, to prosecute such infringement under its sole control and at its sole expense, and any damages or other payments recovered shall belong solely to the RPO.

7.3 *Infringement of third party rights[62].*

(a) If any warning letter or other notice of infringement is received by a Party, or legal suit or other action is brought against a Party, alleging infringement of third party rights in the manufacture, use or sale of any Licensed Product or use of any IP, that Party shall promptly provide full details to the other Party, and the Parties shall discuss the best way to respond.

(b) The Licensee shall have the right but not the obligation to defend such suit to the extent it relates to activities in the Field and shall have the right to settle with such third party, provided that if any action or proposed settlement involves the making of any statement, express or implied, concerning the validity of any IP, the consent of the RPO must be obtained before taking such action or making such settlement.

8. Warranties and liability

8.1 *Warranties by RPO*[63]. The RPO warrants and undertakes as follows:

(a) subject to Clause 8.2(b), it is the registered proprietor of, or applicant for, the IP; and

(b) 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:

(i) granted or agreed to grant any rights in the IP in the Field in the Territory to any other person; and

(ii) assigned, mortgaged, charged or otherwise transferred any of the IP in the Field in the Territory or (subject to Clause 10.3(b)) any of its rights or obligations under this Agreement[64].

8.2 *Acknowledgements.* The Licensee acknowledges and agrees that:

(a) the inventions claimed in the IP, and the Know-how, are at an early stage of development. Accordingly, specific results cannot be guaranteed and any results, materials, information or 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 viable, uncontaminated, safe or non-toxic, accurate, up to date or complete; and

(b) the RPO has not performed any searches or investigations into the existence of any third party rights that may affect any of the IP or Know-how.

8.3 *No other warranties.*

(a) 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[65].

(b) Without limiting the scope of Clause 8.3(a), the RPO does not make any representation nor give any warranty or undertaking:

(i) as to the efficacy or usefulness of the IP or Know-how; or

(ii) as to the scope of any of the IP or that any of the IP is or will be valid or subsisting or (in the case of an application) will proceed to grant; or

(iii) that the use of any of the IP or Know-how, the manufacture, sale or use of the Licensed Products or the exercise of any of the rights granted under this Agreement will not infringe any other intellectual property or other rights of any other person[66]; or

(iv) that the Know-how or any other information communicated by the RPO to the Licensee under or in connection with this Agreement will produce Licensed Products of satisfactory quality or fit for the purpose for which the Licensee intended or that any product will not have any latent or other defects, whether or not discoverable; or

(v) as imposing any obligation on the RPO to bring or prosecute actions or proceedings against third parties for infringement or to defend any action or proceedings for revocation of any of the IP; or

(vi) as imposing any liability on the RPO in the event that any third party supplies Licensed Products to customers located in the Territory.

8.4 *Indemnity*[67]. 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:

(a) the use by the Licensee or any of its Affiliates or sub-licensees of any of the IP or Know-how;

(b) the development, manufacture, use, marketing or sale of, or any other dealing in, any of the Licensed Products, by the Licensee or any of its Affiliates or sub-licensees, or subsequently by any customer or any other person, including claims based on product liability laws; or

(c) a breach by the Licensee of any laws or regulations in the Territory, including any Bribery Event.

8.5 *Conditions for indemnity.* If the RPO seeks indemnification pursuant to Clause 8.4, 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.

8.6 *Liability of Parties.*

(a) 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 8.6. However, the limitations and exclusions of liability set out in this Clause 8.6 shall not apply to any indemnity given under Clause 8.4.

(b) The aggregate liability of the RPO shall be limited to an amount equal to the total income that the RPO has received from the Licensee (less any expenses that the RPO has incurred in obtaining, maintaining or defending the IP) during the period of [●] years preceding the date on which the liability arises, or [●], whichever is the higher.

(c) In no circumstances shall either Party be liable for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the other Party or its Affiliates that is (i) of an indirect, special or consequential nature; or (ii) any loss of profits, revenue, business opportunity or goodwill.

(d) 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.

8.7 *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 and product liability insurance including against all loss of and damage to property (whether real, personal or intellectual) and injury to persons including death arising out of or in connection with this Agreement and the Licensee's and its Affiliates' and sub-licensees' use of the IP or Know-how and use, sale of or any other dealing in any of the Licensed Products. Such insurances may be limited in respect of one claim provided that such limit must be at least six million five hundred thousand Euro (€6.5 million). Product 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.

9. Duration and termination

9.1 *Commencement and termination by expiry.* This Agreement, and the licences granted hereunder, shall come into effect on the Commencement Date and, unless terminated earlier in accordance with this Clause 9, shall continue in force until the later of:

(a) the date on which all the IP have expired or been revoked without a right of further appeal; or

(b) the tenth (10th) anniversary[68] of the first commercial sale of a Licensed Product in the Territory[69],

and on such date this Agreement, and the licences granted hereunder, shall terminate automatically by expiry.

9.2 *Early termination.*

(a) The Licensee may terminate this Agreement at any time on [twelve (12) months'] notice in writing to the RPO.

(b) 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:

(i) 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

(ii) 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.

(c) 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:

(i) if the Licensee fails to pay any amount due under this Agreement by the relevant due date; or

(ii) in accordance with the provisions of Clause 6.5; or

(iii) [if there is any change of Control of the Licensee[70]; or]

(iv) if a Bribery Event occurs in relation to the Licensee, any of its Affiliates or their respective officers, directors, employees and representatives.

(d) [This Agreement shall automatically terminate immediately and without further notice if the Licensee exercises the Option and pays the Assignment Fee, in each case in accordance with Clause 6.6(b).][71]

(e) 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.

9.3 Consequences of termination.

(a) Upon termination of this Agreement for any reason otherwise than in accordance with Clause 9.1 [or Clause 6.6][72]:

(i) the Licensee and its sub-licensees shall be entitled to sell, use or otherwise dispose of [(subject to payment of royalties under Clause 5)] any unsold or unused stocks of the Licensed Products for a period of six (6) months following the date of termination;

(ii) the Licensee shall no longer be licensed to use or otherwise exploit in any way, either directly or indirectly, the IP, in so far and for as long as any of the IP remains in force, or the Know-how;

(iii) the Licensee shall consent to the cancellation of any formal licence granted to it, or of any registration of it in any register, in relation to any of the IP;

(iv) each Party shall return to the other or, at the other Party's request, destroy any documents or other materials that are in its or its Affiliates' or sub-licensees' possession or under its or its Affiliates' or sub-licensees' control and that contain the other Party's Confidential Information; and

(v) subject as provided in this Clause 9.3, and except in respect of any accrued rights, neither Party shall be under any further obligation to the other.

(b) Upon termination of this Agreement for any reason otherwise than in accordance with Clause 9.1 [or Clause 6.6][73] and at the RPO's request, the Parties shall negotiate in good faith the terms of an agreement between them on reasonable commercial terms under which the Licensee would:

(i) transfer to the RPO or its nominee exclusively all results and data relating to the development of Licensed Products;

(ii) to the extent possible, seek to have any product licences, pricing approvals and other permits and applications transferred into the name of the RPO or its nominee;

(iii) grant the RPO or its nominee an exclusive, worldwide licence, with the rights to grant sub-licences, under any improvements and other intellectual property owned or controlled by the Licensee relating to the Licensed Products; and

(iv) grant the RPO or its nominee the right to continue to use any product name that had been applied to the Licensed Products prior to termination of this Agreement.

(c) If the Parties are unable to agree the terms of an agreement as described in Clause 9.3(b) within ninety (90) days of the RPO requesting the negotiation of such an agreement, either Party may refer the terms for settlement by an independent expert who shall be appointed in accordance with the provisions of Schedule 2 and whose decision shall be final and binding on the Parties. At the request of the RPO, the Parties shall promptly execute an agreement on the terms agreed between them or settled by the expert.

(d) Upon termination of this Agreement for any reason the provisions of Clauses [3, 5 (in respect of sales and other supplies made, and sub-licensing income generated, prior to termination or under clause 9.3(a)(i)), 8.4, 8.5, 8.6, 8.7, 9.3 and10][74] shall remain in force.

10. General[75]

10.1 *Force majeure*. Neither Party shall have any liability or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement that result from circumstances beyond the reasonable control of that Party, including labour disputes involving that Party[76]. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.

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

10.3 *Assignment.*

(a) Subject to Clause 10.3(b), neither Party shall assign, mortgage, charge or otherwise transfer any rights or obligations under this Agreement, nor any of the IP or rights under the IP, without the prior written consent of the other Party.

(b) Either Party may assign all its rights and obligations under this Agreement together with its rights in the IP to any company to which it transfers all or substantially all of its assets or business, 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 9.2(b)(ii) applies to it[77].

10.4 *Waiver.* No failure or delay on the part of either Party to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy.

10.5 *Invalid clauses.* If any provision or part of this Agreement is held to be invalid, amendments to this Agreement may be made by the addition or deletion of wording as appropriate to remove the invalid part or provision but otherwise retain the provision and the other provisions of this Agreement to the maximum extent permissible under applicable law.

10.6 *No agency.* Neither Party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf.

10.7 *Interpretation.* In this Agreement:

(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 the masculine include the feminine;

(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; and

(e) where the word "including" is used it shall be understood as meaning "including without limitation".

10.8 Notices.

(a) 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 10.8. The fax numbers of the Parties are as follows[78]: the RPO – [●]; the Licensee – [●].

(b) Notices sent as above shall be deemed to have been received three (3) working days after the day of posting, or seven (7) working days after the date 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).

10.9 Law and jurisdiction.

(a) 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.

(b) Notwithstanding Clause 10.9(a), before commencing any litigation, each Party shall consider in good faith whether it would be reasonable in the circumstances for the Parties to agree to pursue any alternative dispute resolution processes. Such alternative dispute resolution processes may include internal escalation procedures and/or mediation in accordance with the WIPO mediation rules. For the avoidance of doubt, however, nothing in this Agreement shall prevent or delay a Party from seeking an interim injunction.

10.10 Further action. Each Party agrees to execute, acknowledge and deliver such further instruments, and do all further similar acts, as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

10.11 Announcements. Neither Party shall make any press or other public announcement concerning any aspect of this Agreement, or make any use of the name of the other Party in connection with or in consequence of this Agreement, without the prior written consent of the other Party.

10.12 Entire agreement. This Agreement, including its Schedules, sets out the entire agreement between the Parties relating to its subject matter and supersedes all prior oral or written agreements, arrangements or understandings between them relating to such subject matter. Subject to Clause 8.6(d), the Parties acknowledge that they are not relying on any representation, agreement, term or condition which is not set out in this Agreement.

10.13 Export Control Regulations.

(a) "**Export Control Regulations**" mean any United Nations trade sanctions, Irish or EU legislation or regulation, from time to time in force, which impose arms embargoes or control the export of goods, technology or software, including weapons of mass destruction and arms, military, paramilitary and security equipment and dual-use items (items designed for civil use but which can be used for military purposes) and certain drugs and chemicals.

(b) The Licensee shall ensure that, exercising its rights pursuant to this Agreement in using the IP or Know-how and in selling Licensed Products, it shall not and nor shall its or its Affiliates' employees or sub-contractors breach or compromise, directly or indirectly, compliance with any Export Control Regulations.

Agreed by the Parties through their authorised signatories:

For and on behalf of *[Full legal name of the RPO]*	For and on behalf of *[Full legal name of the Licensee]*
________________________ Signed	________________________ Signed
________________________ Print name	________________________ Print name
________________________ Title	________________________ Title
________________________ Date	________________________ Date

Schedule 1

Part A: The IP
[List all IP and any registrations and applications]

Part B: The Know-how
[Describe all Know-how and list any key documents]

Schedule 2

Appointment of expert

1. Pursuant to Clause 5.6 or Clause 6.3, the RPO may serve notice on the Licensee ("**Referral Notice**") that it wishes to refer to an expert (the "**Expert**") the questions set out in Clause 5.6 or 6.3.

2. The Parties shall agree the identity of a single independent, impartial expert to determine such questions. In the absence of such agreement within thirty (30) days of the Referral Notice, the questions shall be referred to an expert appointed by the President of Law Society of Ireland.

3. Sixty (60) days after the giving of a Referral Notice, both parties shall exchange simultaneously statements of case in no more than ten thousand (10,000) words, in total, and each side shall simultaneously send a copy of its statement of case to the Expert.

4. Each Party may, within thirty (30) days of the date of exchange of statement of case pursuant to paragraph 3 above, serve a reply to the other side's statement of case of not more than ten thousand (10,000) words. A copy of any such reply shall be simultaneously sent to the Expert.

5. The Expert shall make his decision on the said questions on the basis of written statements and supporting documentation only and there shall be no oral hearing. The Expert shall issue his decision in writing within thirty (30) days of the date of service of the last reply pursuant to paragraph 4 above or, in the absence of receipt of any replies, within sixty (60) days of the date of exchange pursuant to paragraph 3 above.

6. The Expert's decision shall be final and binding on the Parties.

7. The Expert's charges shall be borne equally by the Parties.

Drafting Notes:

[1] This Model Agreement is a detailed (exclusive) IP and (non-exclusive) know-how licence agreement between an RPO and one of its spin-out companies. The emphasis in this Model Agreement is on the IP comprising patents and patent applications. If other types of IP are to be licensed (e.g. copyright, designs, etc.) in addition, extra provisions could be added to this template in order to address any specific issues they raise (e.g. whether the licensee is permitted to reverse engineer in the case of software). This Model Agreement should be read in conjunction with the accompanying KTI Practical Guide entitled "Practical Guide to Licence Agreements".

This Model Agreement includes optional and alternative provisions that may be selected or discarded as appropriate. For example, the financial terms in this Model Agreement include upfront fees, annual licence fees, milestone payments, minimum royalties, and royalties on both net sales and net receipts. Some but not all of these provisions will typically be encountered in any one agreement of this type.

One of the assumptions that was made when this Model Agreement was put together was that the RPO is the owner of the IP and know-how to be licensed. Before concluding any licensing deal, the RPO should undertake due diligence to ascertain whether or not this is the case and therefore whether this document is a suitable starting point for the deal in question.

[2] Users of this Model Agreement should note that the authors have not drafted it to take account of the individual requirements of Irish RPOs which might apply. Users are advised to seek out and address by additional provisions, any peculiarities or requirements of a relevant RPO.

[3] Users of this Model Agreement are advised that the authors have not drafted it to be used by or in relation to consumers. Contracts concluded with consumers are obliged to include an additional layer of legal protections, to be written in plain-spoken language and to contain other features imposed by consumer-specific laws which are not dealt with in this template.

[4] Users of this Model Agreement should be aware that, depending on the particular circumstances of the arrangements, the law relating to "state aid" might need to be considered (e.g. if the industrial party to the licence agreement does not pay market value for the benefits it receives). This is a complex area and there is no 'one-size-fits-all' way of dealing with it. Accordingly, the user should seek specialist advice when required and see also the separate KTI Practical Guide entitled "Practical Guide to Understanding EU State Aid Rules in Research, Development and Innovation with RPOs".

[5] This should be the date on which the last party signs, and should be inserted by the last signatory, on that date.

[6] Insert the full name of the RPO, the statute or charter under which it was incorporated or established, and its principal/registered address. Individual RPOs will have their own legal formalities which will need to be completed to bind the RPO.

[7] Insert the full name of the company (or other entity), its incorporation number, and its principal/registered address. This Model Agreement has been designed for use with a commercial licensee.

[8] Insert a general description of to what the intellectual property rights to be licensed under this agreement relate.

[9] Insert the date on which the company was incorporated.

[10] Clause 6.6 sets out a mechanism for the possible assignment of the IP to the Licensee. If the parties have agreed that the Licensee may call for the assignment of the IP in certain circumstances, the square brackets around this definition should be deleted – as the term should be used in Clause 6.6(b) to define the consideration for the assignment (which may be a payment in the form of money or shares). If the Licensee will not be entitled to an assignment of the IP, this definition should be deleted.

[11] Insert the date on which this agreement (including the licence) is to commence. This can be a date before, on or after the date on which the licence agreement is signed if appropriate.

[12] The inclusion of this definition assumes that the licence will be limited to a particular technical field. Technical definitions such as those for the 'Field', 'IP', 'Know-how', 'Licensed Products', etc. may require input from

scientific colleagues to ensure that they are clear, accurate, and unambiguous, and do not overlap with any other licences that may have been granted by the RPO to the same technology.

[13] As mentioned above, Clause 6.6 sets out a mechanism for the possible assignment of the IP to the Licensee. The clause requires the Licensee to have satisfied various conditions by certain dates in order to be entitled to call for the assignment. Clause 6.6 includes placeholder wording where these conditions can be specified and the receipt of a certain level of equity investment is given as an example of one of the conditions that the Licensee may be required to satisfy in order to trigger the assignment mechanism. This is a template definition for the type of investment that may lead to the assignment of the IP – i.e. it clearly states that it is the receipt of a certain amount of funds in return for a subscription of shares. This means that raising funds through loans (or debt) would not be sufficient for the purposes of triggering the assignment mechanism.

[14] This definition has been drafted very broadly in light of the complex deal structures that a licensee might agree with a sub-licensee (e.g. a mixture of investment, R&D funding, share swaps, etc.) and the possibility of such consideration being weighted so as to reduce sub-licence fees and royalties. It may be appropriate in some transactions to delete some of the examples given.

[15] This definition provides for a mechanism to determine the Net Sales Value of the Licensed Products and thereby the amount of royalty due to the RPO.

[16] The RPO may include a cap on such deductions (e.g. a percentage of the sales price) or negotiate a fixed-percentage deduction on all sales to avoid the need to calculate the deductions on each occasion.

[17] If the parties have agreed that the Licensee may call for the assignment of the IP if certain conditions are satisfied, the square brackets around this definition should be deleted. If the Licensee will not be entitled to an assignment of the IP, this definition should be deleted.

[18] Insert the full name and title of the principal investigator (i.e. the lead researcher who developed the IP and Know-how to be licensed under this agreement).

[19] Insert the countries in which the Licensee can manufacture and/or sell/supply the Licensed Products. General definitions such as "Europe" should be avoided – for example, it is not clear whether Europe includes Turkey, Russia, etc. In some situations, a list of countries may be appropriate. For western Europe, a definition such as members of the EU or EFTA (European Free Trade Association) may be suitable – the latter grouping includes Switzerland and Norway which are not members of the EU. Also consider whether the definition should be frozen, i.e. members of the EU at the date of the agreement and not future members.

[20] Where this Model Agreement is adapted to be used to govern the performance of obligations in a jurisdiction outside of Ireland, users should note that their ability to enforce the rights and obligations set out here may be subject to the law of that jurisdiction and that local legal advice may need to be sought. Particular issues which may need to be considered include: exclusivity of licence in relation to the IP and know-how (including territorial restrictions); local restrictions on the export or import of IP and know-how; and local distribution or manufacturing laws which may impact on the parties' ability to perform their obligations under these terms.

[21] This grants an exclusive licence to the IP. This means that, in the Territory, nobody but the Licensee has any rights to the IP (except for the rights specifically reserved for the RPO under clause 2.4). In some cases, it may be appropriate to have a mixture of exclusive and non-exclusive IP licences. For example, if there is one exclusive licensee in Europe and another in North America, each may require access to the other party's territory to enable them to conduct clinical trials.

[22] Careful thought should be given to the scope of the exclusive licence granted to the Licensee if the parties have agreed that the Licensee may call for the assignment of the IP if certain conditions are satisfied. If the exclusive licence granted to the Licensee is limited by Field and/or Territory, it is possible (in theory at least) that the RPO may grant other licences to third parties outside of the Field and/or the Territory as applicable. If the RPO is then required to assign the IP to the Licensee (e.g. if the conditions in Clause 6.6 are satisfied), this could cause difficulties for the RPO unless those other licences with third parties were drafted very carefully and with the assignment in mind.

[23] A non-exclusive know-how licence may be appropriate, for example, if the know-how is useful in relation to a wider category of technology or products than the IP or Licensed Products.

[24] This clause is optional. In some countries, it may be necessary to formally register IP licences with intellectual property offices using a particular form of words in the licence. This clause seeks to address the question of conflicts between the wording of the required formal licence and the wording of this agreement.

[25] There may be circumstances where it is necessary for the RPO to have access to the sites of development and/or manufacture. However, this is unlikely to be a requirement for the RPO in many cases.

[26] Payment terms vary considerably from licence agreement to licence agreement. For completeness, this payments clause is detailed and includes provisions to deal with the most common variants of payment terms. For example, the financial terms in this payments clause include upfront fees, annual licence fees, milestone payments, minimum royalties, and royalties on both net sales and net receipts. However, it is likely that in many licence agreements some of these variants will be removed, which will simplify this clause and explains why the majority of provisions in this clause are in square brackets. If any complex payment terms are to be included, the user should consider including a practical example of how the payments should be calculated in order to avoid any uncertainty as to the intention of the clause.

[27] Sometimes the parties may agree that the RPO should receive shares in the Licensee in consideration of the grant of the licence. If this is the case, this payments clause will need to be amended to provide for the issue of shares to the RPO, such as by the insertion of the following clause:

Issue of shares. Within thirty (30) days of the Commencement Date:

- *(a) The Licensee shall:*
  - *(i) issue to the RPO [●] new, fully paid-up shares of €[●] each in the Licensee, without charge to the RPO; and*
  - *(ii) deliver to the RPO a share certificate to reflect such issue of shares; and*
- *(b) [The RPO shall, if it is not already a party to the Shareholders' Agreement, execute a Deed of Adherence in the form required by the Shareholders' Agreement.]*

Obviously, the above clause will need to be tailored according to the particular circumstances, e.g. depending on whether the RPO will be required to execute a Deed of Adherence in order to be bound by any Shareholders' Agreement. And if, so the following two definitions, will also need to be inserted into the table of definitions towards the start of the Agreement:

Deed of Adherence	*A deed under which a person agrees to be bound by the terms of the Shareholders' Agreement.*
Shareholders' Agreement	*Any written shareholders' agreement that may be in force at the Commencement Date between the shareholders of the Licensee to regulate their affairs as shareholders in the Licensee.*

If the RPO will be required to execute a Deed of Adherence, it should obviously request a copy of the Shareholders' Agreement and satisfy itself that it is comfortable with the terms (or negotiate and amend them accordingly). For example, if the RPO wishes to be protected from any dilution of its percentage shareholding in the Licensee, it will need to make sure that this is adequately addressed in the Shareholders' Agreement.
A common mistake that the authors see is, where the licensor will receive shares under the licence agreement, licensors sometimes try to build in provisions in the licence agreement to protect their position as shareholders (e.g. including provisions purporting to give them rights to appoint directors, to protect them from dilution, etc.). However, these types of provisions need to be agreed by the other shareholders and, accordingly, may be unenforceable in a licence agreement. Accordingly, these types of provisions belong in a shareholders' agreement.

For completeness, it is noted here that any issue of shares that the RPO may receive in return for the grant of the licence is separate and additional to any issue of shares that the RPO may receive under any shareholders' agreement (e.g. in recognition of its past contribution to, and support of, the spin-out company).

[28] Users of this Model Agreement are advised that it has not been prepared with regard to any tax law, treatment or policy and that it may be advisable to get specific tax advice in relation to any tax issue or treatment which might arise as a result of performing or implementing this agreement. Tax treatment will depend in part on the parties' circumstances at the time the agreement is made and thereafter.

[29] Whilst it is a point for commercial negotiation in each case, generally, up-front payments in technology licence agreements are usually not offset against royalties.

[30] This clause sets out the amount to be paid to the RPO for entering into the licence agreement. This amount will need to be assessed on the likelihood of Licensed Products being sold and royalties being paid.

[31] In the pharmaceutical sector, examples of typical milestone events include applications for regulatory approval, starting or completing phase I, II, or III clinical trials, etc. It is important to have clear and unambiguous definitions of the milestone events. For example, "successful completion of phase I trials" leaves open the question of what constitutes success, and some licensees have argued that it means the point at which the licensee takes the decision to commence phase II trials. Input may therefore be required from scientific (and if appropriate regulatory) colleagues when drafting clauses such as this.

[32] This clause sets out the percentage of the Net Sales Value of the Licensed Products to be paid to the RPO as royalty on a quarterly basis. To be negotiated.

[33] The wording of this clause will depend in part on the commercial deal structure. For example, if Licenced Products can be leased rather than sold, it may be appropriate to charge a royalty on the hire fee. Similarly, if the Licensee provides services using Licensed Products, royalties may be appropriate on the fees charged for such services. This clause will need to be adapted as appropriate.

[34] This clause is optional. If Net Receipts are not to be included, then delete this clause and the definition of Net Receipts.

[35] This can be a fixed fee that is paid annually to maintain the licence. Depending on the deal, this may be omitted or be included in minimum royalties.

[36] This clause is optional.

[37] This provides a mechanism for calculating the Net Sales Value when the Licensed Product is incorporated into another product. Where the Combination Product is already known, it may be more appropriate to agree the Net Sales Value as a percentage of the net sales value of the Combination Product.

[38] This provides a minimum annual royalty to be paid to the RPO and is a good incentive for the Licensee to diligently promote sales of the Licensed Product. This value needs to be considered carefully so as to incentivise the Licensee based on realistic market conditions. It may need to be varied at different times during the term of the licence agreement.

[39] This is an optional (pro-licensee) clause. When clauses such as this are included in licence agreement, different commercial solutions are seen on this issue. For example, if a very low royalty is being paid to the licensor, the licensor might argue that the royalties should not be reduced further. Where the parties have no better solution to propose, or do not feel it is worth spending time debating the issue, a solution that is quite often seen is to allow 50% of the third-party royalties to be deducted from royalties paid to the licensor, subject to a floor whereby the licensor's royalties are never reduced by more than 50% of the amount they would have been in the absence of the clause.

[40] Please note that this clause is in square brackets, as if the deal does not involve royalty-based payments, it should be deleted.

[41] Insert the RPO's bank and bank account details.

[42] Insert a suitable reference rate.

[43] Please note that this clause is in square brackets, as if the deal does not involve royalty-based payments, it should be deleted.

[44] Please note that this clause is in square brackets, as if the deal does not involve royalty-based payments, it should be deleted.

[45] Sometimes parties also include in this clause obligations on the licensee to achieve specific milestone events by defined dates, instead of or as well as general reporting and diligence obligations to develop and commercialise Licensed Products.

[46] If the RPO is reasonably of the view that the Licensee is not using Diligent and Reasonable Efforts to develop and commercially exploit Licensed Products, then the RPO may refer the questions in Clause 6.4 to an independent expert. This mechanism is designed to provide a relatively inexpensive, quick, unaggressive but authoritative means of determining whether a licensee has been diligent in exploiting Licensed Produce. Experts, as distinct from arbitrators, are usually chosen to decide technical questions that do not require a full judicial process. In general, an expert's decision is not made subject to appeal to the courts. The notion is that the expert supplements the agreement between the parties.

A possible alternative to referral to an expert is referral to arbitration using an 'expedited procedure'. For example, the American Arbitration Association model rules for arbitration anticipate that an expedited procedure may be used in certain situations. The advantage of using a procedure such as referral to an expert or expedited arbitration may be that costs and delays are reduced. But of course 'quick and dirty' procedures do not always give the best result. These ideas are being put forward for consideration, and not as a perfect solution in all cases.

[47] If the parties have agreed that the Licensee may call for the assignment of the IP if certain conditions are satisfied, the square brackets around this clause should be deleted. If the Licensee will not be entitled to an assignment of the IP, this entire clause (6.6) should be deleted.

[48] If it is important that the Licensee should achieve the various conditions needed to call for the assignment of the IP by certain dates, the square brackets around this wording should be deleted. If dates are specified, they should be meaningful and realistic, and can be discussed between the parties if appropriate.

[49] This table should be completed as appropriate.

[50] If the dates to achieve the various milestones will not form part of the conditions for the assignment, the parties can consider whether this column in the table is still required or whether the heading should be revised (e.g. to make clear the dates are indicative or estimates only).

[51] This wording is in square brackets as it needs to be tailored to the particular circumstances. As placeholder wording, it sets out two possible types of payment to the RPO in return for the assignment, i.e. a lump-sum payment and/or an issue of shares.

[52] To keep the arrangements very simple after any assignment of the IP to the Licensee, this Model Agreement provides for the Licensee to have an on-going royalty-free, non-exclusive licence to use the Know-how once the assignment has taken effect. For example, this means that the Field and Territory restrictions that were originally stated in clause 2.1(b) to apply to the Know-how will no longer "bite". As stated in clause 9.2(d), this Model Agreement provides for its automatic termination in the event that the Licensee exercises the Option and pays the Assignment Fee, meaning that the only terms that will continue to apply to the Know-how licence are those stated in clauses 6.6(c) and 9.3 to continue to have effect after termination. Accordingly, the user should note that the rights of the RPO to terminate the licence (stated in clause 9.2) will no longer apply to the Know-how. Therefore, users should consider carefully whether or not this clause (6.6(c)(ii)) is appropriate in any particular circumstance. For example, if the RPO has granted to any third party an exclusive licence under the Know-how outside of the Field, then this clause will not be appropriate.

[53] The reader should note that this wording is not "bullet proof". For example, if the Licensee fails to pass on these obligations and then the Licensee ceases to exist, the RPO could be left without a remedy. This is one of the risks of assignment – in general, if the RPO wants to retain any sort of control over the IP, it should not agree to an assignment.

[54] The assignment of the IP brings this Licence Agreement to an end. As mentioned in an earlier clause, the template provides for the Licensee to continue using the Know-how after the assignment on a royalty-free basis. Accordingly, it is essential that the conditions for triggering the assignment and the consideration for the assignment are carefully considered.

[55] The terms of this clause have been designed to be suitable as a starting point for discussion where an exclusive licence is being granted. If a non-exclusive licence is being granted, the RPO may wish to include different terms here. For example, in clause 7.1, giving rights to the Licensee to manage any patents that form part of the IP and, in clause 7.2, giving rights to the Licensee to sue infringers, are things that the RPO will want to consider carefully in any licence agreement and is unlikely to want to include in a non-exclusive licence agreement.

[56] This clause is in square brackets as it assumes that patents and/or patent applications form part of the IP. If there are none, it should be deleted.

[57] Licence agreements vary on whether the licensor or the licensee should manage patent filings, and the clause included in this template may be more appropriate where the licensee is licensed in all fields and all territories. If the licence is more limited, however, the RPO may wish to retain control of the patenting process and recover some or all of the costs from the licensee instead.

[58] The RPO and the Licensee will need to discuss what actions to take to deal with infringement of the IP.

[59] It is obviously a commercial question as to which party can or must take action. It is therefore best to address these issues in the licence agreement.

[60] This issue can lead to heated debate in licence negotiations. From a licensor's perspective, if the licensee is awarded damages by a court (or settles before the case reaches court), those damages are intended to compensate the licensee for its revenue lost because a third party, rather than the licensee, has sold the products covered by the IP (or at least this is one of the theories behind damages). If the licensee had generated that revenue from the sale of licensed products or from sub-licensing, the licensor would have been entitled to a share of the revenue (i.e. if a royalty is payable on net sales or on net receipts). Therefore, the licensor should also be entitled to a share of the damages. Some licensees argue that the licensor should contribute to the costs of the litigation against the infringer, and receive a corresponding share of the damages (e.g. if it pays 50% of the litigation costs, it gets 50% of the damages). Sometimes one view or the other wins on this issue. Occasionally, a compromise is accepted, e.g. a royalty is paid at the lower rate applicable to net sales rather than the (usually) higher rate applicable to net receipts.

[61] In some jurisdictions, the licensee may not have the necessary legal standing to sue infringers in its own name, and may need to make the RPO, as IP owner, a party to the proceedings.

[62] The parties must notify each other promptly if there is any infringement of third-party intellectual property rights. Some licensees seek an indemnity from the licensor against claims of infringement by third parties. However, most licensors (particularly academic licensors) generally would not be willing to give such an indemnity. Usually, a licensee is willing to accept amendments to the fee structure to deal with this.

[63] This is an example of some fairly light touch warranties – focussed on the IP – that the RPO may consider giving, if required. However, although relatively light touch, the RPO should not give the warranties without carrying out the necessary due diligence.

[64] This warranty is only appropriate if granting an exclusive licence to the IP.

[65] Although wording of this kind will generally be considered useful, it cannot be guaranteed to exclude terms implied by law. As to which terms will be implied by law, the answer will depend on which country's laws govern the contract. For example, under Irish law, very few terms are generally implied into an intellectual property licence agreement (other than certain rights which may be implied in relation to software, e.g. under the Sale of Goods and Supply of Services Act 1980). Under some continental European countries' laws, more terms may be implied, e.g. as to the validity of the licensed IP, suing infringers, providing improvements and assistance to the licensee, etc.

[66] The RPO is not guaranteeing that use of the IP or the Know-how, or the manufacture/sale/use of any Licensed Products, will not infringe a third party's intellectual property rights.

[67] An important issue with any indemnity is whether it applies only to third-party claims or also to inter-party claims. Generally, indemnities are more suited to third-party claims and liabilities, and that they are often not needed for inter-party claims (e.g. for breach of warranty), where they are usually intended to strengthen the indemnified party's position beyond that which it would have under the general law of contract. This topic raises complex legal issues (which may vary between jurisdictions) on which specialist advice should be sought.

[68] The period can be negotiated based on the remaining term of the IP. Note that Know-how may remain confidential for a longer period.

[69] The user could consider adding an obligation on the Licensee to notify the RPO of the date on which it makes the first commercial sale of a Licence Product, so that the RPO can keep track of this anniversary date.

[70] The Licensee may be reluctant to accept this provision, particularly if it operates in an industry where mergers and acquisitions, joint ventures, etc. are common, and the Licensee may therefore wish to avoid prejudicing its ability to pursue corporate transactions of this kind. For some companies, their licence agreements represent their major assets. Any acquirer undertaking due diligence on the Licensee will wish to satisfy itself that those assets will have value following the acquisition. A change-of-control clause could amount to a 'poison pill' that removes such value following the acquisition. A possible compromise that is sometimes seen is to limit this right of termination to defined companies, e.g. major competitors. Similar considerations apply to the clause concerning rights of assignment, below.

[71] If the parties have agreed that the Licensee may call for the assignment of the IP if certain conditions are satisfied, the square brackets around this clause should be deleted. If the Licensee will not be entitled to an assignment of the IP, this entire sub-clause should be deleted.

[72] If the parties have agreed that the Licensee may call for the assignment of the IP if certain conditions are satisfied, the square brackets around this wording should be deleted. If the Licensee will not be entitled to an assignment of the IP, this wording (in square brackets) should be deleted.

[73] If the parties have agreed that the Licensee may call for the assignment of the IP if certain conditions are satisfied, the square brackets around this wording should be deleted. If the Licensee will not be entitled to an assignment of the IP, this wording (in square brackets) should be deleted.

[74] The list of clauses set out in this sub-clause will require careful checking as the rounds of drafting progress.

[75] Parties may wish to seek advice whether the licence agreement raises any competition law issues, e.g. under Article 101(1) of the Treaty on the Functioning of the European Union (TFEU), Section 4(1) of the Competition Act 2002 (as amended), or the Technology Transfer Block Exemption Regulation (TTBER). For further information, the reader should see the section which provides further detail in the accompanying Practical Guide.

[76] Some agreements include a long list of force majeure events. If there are particular issues that might be relevant in the Licensee's territory, e.g. civil war, it may be worth including specific mention of these.

[77] This sentence seeks to avoid assignments by a liquidator.

[78] Complete with title and address of the office bearer for each party to whom notices about the licence agreement should be sent.

Knowledge Transfer Ireland
Where Research & Business Connect

KTI Model Letter of Appointment of a Non-Executive Director

Dated ______________________________________20[●]

[*Full legal name of the Company*]

And

[*Full legal name of the Director*]

MODEL LETTER OF APPOINTMENT FOR A NON-EXECUTIVE DIRECTOR

[*On Company's letterhead*]

[*Insert date*]

[*Insert director's full name*]
[*Insert director's residential address*]

Dear [*insert name*],

Appointment as Non-Executive Director[1]

I write on behalf of [*insert Company's full name*][2] (the "**Company**") to confirm the terms of your appointment as a non-executive director of the Company, as follows:

1. Appointment

1.1. Subject to the terms of this letter, your appointment as a non-executive director of the Company is for an initial term commencing on [*date*] and ending [on [*date*]] [at the conclusion of the Company's [next] Annual General Meeting (AGM).[3]

1.2. Your appointment is also subject to the terms of the Company's constitution (the **"Constitution"**). Nothing in this letter varies the terms of the Constitution as they apply to you as a director of the Company. If the shareholders do not re-elect you as a director, or you are retired or removed from office in accordance with the Constitution, or you are disqualified or restricted from acting as a director, your appointment will terminate automatically, with immediate effect and without compensation.

1.3. You may be required to serve on one or more committees of the board of directors of the Company (the "**Board**"). You may also be asked to serve as a non-executive director on the board of any of the Company's subsidiaries or joint ventures. Any such appointment will be covered in a separate communication.

1.4. Notwithstanding any other provision of this letter, and in addition to any of the provisions concerning vacation of office in the Companies Act 2014, we may terminate your appointment with immediate effect if:

(a) you commit a material breach of your obligations under this letter; or
(b) you commit any serious or repeated breach or non-observance of your obligations to the Company (which obligations include an obligation not to breach your duties to the Company, whether statutory, fiduciary or common-law); or
(c) in the opinion of the Board, acting reasonably, you cease to contribute effectively or to demonstrate commitment to the role; or
(d) you are guilty of any fraud or dishonesty or acted in a manner which, in the opinion of the Board acting reasonably, brings or is likely to bring you or the Company into disrepute or is materially adverse to the interests of the Company; or
(e) you are convicted of any arrestable criminal offence [other than an offence under road traffic legislation in Ireland or elsewhere for which a fine or other non-custodial penalty is imposed]; or
(f) you are declared bankrupt or make an arrangement with, or for the benefit of, your creditors; or
(g) in the opinion of the Board, acting reasonably, your position as a non-executive director becomes untenable due to a conflict of interest.

1.5. On termination of your appointment as a non-executive director of the Company for any reason, you shall, at the request of the Company, immediately resign from your office as a director of the Company [and all offices held by you in any subsidiary of the Company]. As security for your performance under this Clause 1.5, the Company and each director of the Company is hereby irrevocably and unconditionally appointed as your attorney for such purpose.[4]

1.6. If there are matters which arise which cause you concern about your role as a non-executive director of the Company, you should discuss them with [me]. If you have any concerns which cannot be resolved, and you choose to resign for that, or any other, reason, you should provide an appropriate written statement to [me] for circulation to the Board.

2. Time commitment

2.1. You shall devote such time as is necessary for the proper performance of your duties as a non-executive director of the Company and you should be prepared to spend at least [number of days] days per [month/year] on Company business. This is based on preparation for and attendance at:
(a) scheduled Board meetings;
(b) [Board dinners;]
(c) [the annual Board strategy away-day(s);]
(d) the AGM;
(e) [site visits;]
(f) [meetings of the non-executive directors;]
(g) [meetings with shareholders; and]
(h) [updating meetings/training.]

2.2. The nature of your role as a non-executive director of the Company makes it impossible to be specific about the maximum time commitment, and there is always the possibility of additional time commitment in respect of preparation and *ad hoc* matters which may arise from time to time, particularly when the Company is undergoing a period of increased activity.[5] At certain times it may be necessary to convene additional Board, committee or shareholder meetings.

2.3. [The average time commitment stated in clause 2.1 will increase should you become a committee member or chair, or if you are given additional responsibilities, such as being appointed as a non-executive director on the boards of any of the Company's subsidiaries. [Details of the expected increase in time commitment will be covered in any relevant communication confirming the additional responsibility.]]

3. Duties

3.1. You shall perform your duties, whether statutory, fiduciary or common-law, faithfully, efficiently and diligently to a standard commensurate with both the functions of your role and your knowledge, skills and experience.

3.2. You shall exercise your powers in your role as a non-executive director having regard to relevant obligations under prevailing law and regulation [including all relevant obligations specified in the Companies Act 2014 and in particular in section 228 of that Act].[6]

3.3. In your role as a non-executive director of the Company you shall:[7]
(a) constructively challenge and help develop proposals on strategy;
(b) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
(c) satisfy yourself on the integrity of financial information and that financial controls and systems of risk management are robust and defensible;
(d) determine appropriate levels of remuneration of executive directors and have a prime role in appointing and, where necessary, removing executive directors, and in succession planning;
(e) devote time to developing and refreshing your knowledge and skills;
(f) uphold high standards of integrity and probity and support me and the other directors in instilling the appropriate culture, values and behaviours in the boardroom and beyond;
(g) insist on receiving high-quality information sufficiently in advance of board meetings; and
(h) take into account the views of shareholders and other stakeholders where appropriate.

3.4. You shall exercise relevant powers under, and abide by, the Constitution.

3.5. You shall exercise your powers as a director in accordance with the Company's policies and procedures [and internal control framework].

3.6. You shall disclose any direct or indirect interest which you may have in any matter being considered at any Board meeting or committee meeting and, save as permitted under the Constitution, you shall not vote on any resolution of the Board, or of one of its committees, concerning any matter where you have any direct or indirect interest.

3.7. You shall immediately report to me your own wrongdoing or the wrongdoing or proposed wrongdoing of any employee or director of which you become aware.

3.8. Unless specifically authorised to do so by the Board, you shall not enter into any legal or other commitment or contract on behalf of the Company.

4. Remuneration and expenses

4.1. [The Company shall pay you a director's fee.[8] The annual fee rate as at the date of this letter is €[amount] gross per annum, paid [monthly/quarterly] in arrears. Fees will be subject to an [annual/periodic] review by the Board. The director's fee covers all duties, including service on any Board committee or Company subsidiary, [with the exception of committee chairmanships and certain additional responsibilities]. [In your case, a further fee of €[amount] is payable as at the date of this letter for taking on [chairmanship of the [name of committee] Committee.]]

4.2. [All fees are paid through the Company's payroll and are subject to income tax and other statutory deductions including, where applicable, social insurance and universal social charge.][9]

4.3. Subject to any statutory deductions that the Company is required to make, the Company will reimburse you for all reasonable and properly-documented expenses you incur wholly and exclusively in performing the duties of your office as a non-executive director of the Company. The procedure and other guidance in respect of expense claims is set out in [*name of document*].[10]

4.4. On termination of your appointment as a non-executive director of the Company you will only be entitled to [such director's fees as may have properly accrued to the date of termination, together with] reimbursement in the normal way of any expenses properly incurred prior to that date.

5. Independence and outside interests

5.1. You have already disclosed to the Board the significant commitments you have outside this role. You must inform me in advance of any changes to these commitments. Before accepting further commitments that might give rise to a conflict of interest or a conflict of any of your duties to the Company, or which might impact on the time that you are able to devote to your role at the Company, you must seek and obtain the written approval of the Board.

6. Confidentiality and personal data

6.1. You acknowledge that all information acquired during your appointment (including technical, commercial and financial information) is confidential to the Company. Accordingly:

(a) you shall take appropriate steps to secure the confidentiality of any such information in your possession;

(b) you shall not use such information other than for the benefit of the Company in the course of performing your duties as a director of the Company; and

(c) you shall not release, communicate, nor disclose such information either during your appointment or following termination (by whatever means), to third parties without my prior clearance.

6.2. These restrictions survive the termination or expiry of your appointment, but will cease to apply to any confidential information which may (other than by reason of your breach) become available to the public generally.

6.3. If, in your role as a non-executive director of the Company, you come into the possession of any personal data (as defined in the General Data Protection Regulation (EU) 2016/679), you shall comply with the Company's policy on personal data set out in [*name of document*], a copy of the current version of which may be found [*where?*].

6.4. The Company may process personal information about you in accordance with its [privacy policy] as updated from time to time, a copy of the current version of which may be found [*where?*].[11]

7. Intellectual property rights

7.1. For the purpose of this clause, "Company Intellectual Property" includes:

(a) confidential information of the Company as described above; and

(b) patents, copyright, trade marks, design rights and other forms of intellectual property in respect of anything that concerns the business or potential future business of the Company, including, in the case of registrable property, applications for and the right to apply for such property.

7.2. In the course of performing your duties under this letter, you may generate or contribute to the generation of Company Intellectual Property.[12] Accordingly:

(a) You hereby assign and agree to assign to the Company any and all rights that you may have in Company Intellectual Property, without charge or other condition;

(b) Promptly notify the Company of any Company Intellectual Property and cooperate with the Company in seeking or obtaining Company Intellectual Property; and

(c) Execute any documents and provide any assistance that the Company may require to give effect to the provisions of this clause. As security for your performance under this Clause 7.2(c), the Company and each director of the Company is hereby irrevocably and unconditionally appointed as your attorney for such purpose.

7.3. You hereby waive all moral rights in respect of all copyright works created by you in the course of performing your duties hereunder.

8. Insurance

8.1. At any time after the Company has started to engage in trading activity, you may request that the Company seeks directors' and officers' insurance for its directors and officers, if available on reasonable commercial terms.[13]

9. Independent professional advice

9.1. Circumstances may occur when it will be appropriate for you to seek advice from independent advisers at the Company's expense. A copy of the Board's agreed procedure under which directors may obtain independent advice will be provided by the Company Secretary. The Company will reimburse the reasonable cost of expenditure incurred by you in accordance with its policy.[14]

10. Return of property

10.1. Upon termination of your appointment with the Company (for whatever cause), you shall deliver to the Company all documents, records, papers or other company property which may be in your possession or under your control, and which relate in any way to the business affairs of the Company, and you shall not retain any copies thereof.

11. [Non-compete clause

11.1. By countersignature of this letter and in consideration for the fees payable to you under the terms of this letter, you now agree that you shall not (without the previous consent in writing of the Company), for the period of six months immediately after the termination of your office, whether as principal or agent and whether alone or jointly with, or as a director, manager, partner, shareholder, employee or consultant of, any other person, carry on or be engaged, concerned or interested in any business which is similar to or competes with any business being carried on by the Company [or any subsidiary of the Company].][15]

12. Law

12.1. Your engagement with the Company is governed by and shall be construed in accordance with the laws of Ireland and your engagement shall be subject to the exclusive jurisdiction of the courts of Ireland.

12.2. This letter constitutes the entire terms and conditions of your appointment as a non-executive director of the Company and no waiver or modification thereof shall be valid unless in writing and signed by the parties hereto.

Please consider the terms of this letter carefully. If you are in agreement with them, I should be obliged if you would confirm your understanding and acceptance of them by returning one signed copy of this letter to the above address marked for the attention of [*insert name*], whereupon the terms will take effect as a legally binding contract between you and the Company.

Yours sincerely,

For and on behalf of **[*Full legal name of the Company*]**	**Accepted and agreed by:** **[*Full legal name of the Director*]**
____________________ Signed	____________________ Signed
____________________ Name	____________________ Name
____________________ Title	____________________ Title
____________________ Date	____________________ Date

Drafting Notes:

[1] It is usually helpful to set out the duties of the non-executive director in a written agreement. Although not a legal requirement, entering into such an agreement will help to ensure that each party knows what is expected from the director, as well as dealing with certain other basic issues such as the duration of the appointment, the time commitment, what you want the director to do, and whether any fees and expenses are to be paid. If it is anticipated that the time commitment will be more than that typically expected of a non-executive director, it may also be appropriate to put in place a written employment or consultancy agreement to cover that additional work. As this agreement mentions at various points, the core duties of a director are set out in company legislation, and this agreement does not attempt to reproduce those legal duties in detail; instead it focuses on practical issues. While the document may appear rather detailed, it omits many terms that would be considered appropriate for a director of a large or listed company.

[2] As with all agreements to which a company is party, the correct company name should be given, including any "Limited" or similar.

[3] The starting point in company law (s. 144(3), Companies Act) is that the directors are appointed by the shareholders in general meeting, unless a different arrangement is provided for in the Constitution and/or shareholders' agreement. This clause assumes, therefore, that the director is being appointed until the next general meeting, when the appointment will either be confirmed or will end. If the Constitution or shareholders' agreement does provide differently, e.g. by allowing appointment by the Board of Directors, then this clause may require modification.

[4] This clause may require explanation to or discussion with the founders. The role of director is separate, in company law, from the role of a shareholder or employee. A founder may be a central, driving force for the company's technology or business, particularly in its early years, but this is regarded as a separate issue from whether the company is able to terminate a directorship in defined circumstances, in accordance with company law.

[5] An example of such a period might be if the company is in financial difficulties and the Board needs to take steps to avoid the company becoming insolvent, or if a major corporate transaction involving the company is contemplated.

[6] While it is not essential to cross-refer to sections of company legislation, the referenced section of the Companies Act is a core statement of directors' duties.

[7] This list of obligations is not essential, but reflects what many companies expect their directors to do, and setting these obligations out in writing may be helpful for all concerned.

[8] Not all companies pay a director's fee, so this clause is in square brackets as an optional clause. Sometimes, directors are considered to benefit through their shareholdings, or they may have separate employment or consultancy contracts.

[9] A first draft of this clause included, as an alternative, provision for the director to be self-employed, to charge VAT on his fees if registered for VAT, and to indemnify the company if the tax authorities decided he or she was, in fact, an employee. However, we understand that it is extremely rare for directors to have this tax status in Ireland, so these terms were deleted in the final version. The company may wish to seek tax advice before making any different arrangements to those set out in this clause.

[10] When setting any company policy on expenses etc., the directors may wish to seek tax advice on what level of expenses is free from tax.

[11] This clause, and the previous one, are very brief statements about data protection, perhaps much briefer than would have been thought appropriate before the introduction of GDPR. The clauses assume that the company will have spent time considering GDPR issues more generally and will have set out their policies in written documents to which these clauses cross-refer.

[12] In the absence of a clause of this kind, the ownership of inventions and other IP generated by a director may be unclear. While the starting point is that non-employees generally own their own IP, directors have special, fiduciary duties to act in the best interests of the company, and in some situations this may mean that the company is beneficially entitled to any IP generated as a director. In cases of difficulty, the parties (plus the RPO) may wish to draw up a written protocol, perhaps with examples, to clarify when particular categories of IP will be owned by the RPO, by the company or by the individual.

[13] This provision should be checked for consistency with the Constitution and any shareholders' agreement for the company. Another term that is sometimes included is for the company to agree to indemnify the director against third

party claims (to the extent accepted by the court under current company legislation) – again, any such term should be checked against those other documents.

[14] It is rare, in the authors' experience, for directors of small companies to take advantage of this right.

[15] A clause of this kind may be considered controversial or essential, depending on your perspective. It is included for the company to consider whether it wishes to require such an obligation from its directors. It may not be suitable for all of them. If it is considered appropriate, it may be desirable to define more exactly what a competing company is, e.g. by defining a field of activity.

Model Form of Constitution of a Private Company Limited by Shares

CONSTITUTION[1 2]
OF
[INSERT FULL NAME OF THE COMPANY] LIMITED[3]

---

1. The name of the company is: [insert] Limited.[4]

2. The company is a private company limited by shares, registered under Part 2 of the Companies Act 2014.

3. The liability of the members is limited.

4. The share capital of the company is €[*insert*] divided into [*insert*] shares of €[*insert*] each. / The share capital of the company is divided into shares of €[*insert*] each.[5]

5. Supplemental Regulations (if any).[6 7 8 9]

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in the pursuance of this constitution, and we agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Address and Description of Subscribers	Number of Shares taken by each Subscriber
Name: [10] **Address:** **Description:**	
Name: **Address:** **Description:**	
Total shares taken:	

As appropriate:[11]

Signatures in writing of the above subscribers, attested by witness as provided for below; or

Authentication in the manner referred to in section 888.

Dated the ______ day of ____________ 20______

Witness to the above Signatures:

Name: ____

Address: ____

Drafting Notes:

[1] This is a Model Constitution for a newly incorporated private company limited by shares registered in Ireland under Part 2 of the Companies Act 2014. The constitution is a formal document required by the Companies Act 2014. Section 19 of the Companies Act 2014 prescribes what form the constitution of a private company limited by shares is required to take and what it is required to state. Schedule 1 of the Companies Act 2014 sets out a template constitution for a private company limited by shares. This Model Constitution follows that statutory template – i.e. it is identical to the constitution set out at Schedule 1 of the Companies Act 2014 (except that the fictional examples given in the statutory constitution for a (presumably made-up) company called the South Eastern Counties Flooring and Tiling Company Limited have been deleted). A link to the statutory constitution can be found here: http://www.irishstatutebook.ie/eli/2014/act/38/schedule/1/enacted/en/html#sched1 A version of the statutory constitution has been included in the KTI Model Agreements, so that these drafting notes could be provided for users.

[2] Together with any shareholders' agreement for the company, the constitution sets out a detailed set of rules governing the relationship between the shareholders and the company.

[3] Insert the full legal name of the company.

[4] Insert the full legal name of the company.

[5] The correct alternative wording for the particular company should be selected and the other alternative wording deleted. Which is the correct alternative wording will depend on whether the company has an authorised share capital.

[6] This paragraph provides a placeholder for additional provisions to be added to the constitution, if thought appropriate in any particular circumstance. In general, it is fairly typical for a series of additional paragraphs to be built into the constitution – e.g. when lawyers are involved in the transaction, or when founders want more detail included in the constitution (e.g. to avoid having to keep referring back to the Companies Act 2014), or when a standard template constitution from a company formation agent is being used.

Examples of additional provisions that are commonly added to the constitution are as follows: (i) provisions to give the directors the authority to allot shares; (ii) provisions to permit financial assistance and the buy-back of company shares; (iii) provisions to require the shareholders to approve the remuneration of the directors (as, by default, this is set by the directors themselves); and (iv) provisions to provide that the "optional" provisions set out in the Companies Act 2014 (as that term is defined by section 54(1) of the Companies Act 2014) apply to the constitution of the company.

Other examples of additional provisions that are sometimes added to the constitution are as follows: (i) provisions to disapply the requirement that directors are only appointed until the next annual general meeting (AGM) of the company; (ii) provisions to permit the directors reasonable personal use of company property (otherwise this is prohibited under section 228 of the Companies Act 2014); (iii) provisions to enhance the language in section 161 of the Companies Act 2014 concerning alternate directors; and (iv) provisions to provide the directors with an indemnity if they are successful in defending proceedings under sections 233/234 of the Companies Act 2014 and in execution of their duties as far as permitted by section 235 of the Companies Act 2014.

However, all additional provisions proposed should be considered carefully in the context of the particular transaction, as what was appropriate for one company may not be appropriate for another and not all of these "typical" additions to constitutions may be appropriate in the context of RPO spin-out companies.

[7] If the company is an early-stage pre-investment spin-out company from the RPO and the KTI Model Subscription and Shareholders' Agreement (for an early-stage, pre-investment private company limited by shares) is also being used as part of the transaction, the user should consider adding certain additional paragraphs to the constitution in order to ensure that the two documents are consistent. For example, the RPO's right to appoint a director and/or an alternate are in addition to the company law requirements set out at sections 144 and 165 of the Companies Act 2014. Accordingly, the user should consider building in the wording of (i) clause 4.2(a) of the KTI Model Subscription and Shareholders' Agreement (concerning the appointment of directors) as numbered paragraph 5 of the constitution, and (ii) clause 4.2(b) of the KTI Model Subscription and Shareholders' Agreement (concerning the appointment of alternates) as numbered paragraph 6 of the constitution (and in each case with the defined terms used in those clauses explained in the constitution).

[8] In addition, if the company is an early-stage pre-investment spin-out company from the RPO and the KTI Model Subscription and Shareholders' Agreement (for an early-stage, pre-investment private company limited by shares) is also

being used as part of the transaction and the user has specified in clause 5.2(e) of the Subscription and Shareholders' Agreement anything other than two directors being required for the quorum of board meetings, another additional paragraph will need to be added to the constitution to vary section 160(6) of the Companies Act 2014.

[9] Users should note that section 19(2)(b) of the Companies Act 2014 requires the constitution to be divided into paragraphs numbered consecutively, so any additional paragraphs should be numbered accordingly, and the numbering of the subsequent paragraphs should be updated as well.

[10] Insert the required details about the subscribers and their shareholding in the table as appropriate.

[11] The constitution should be dated and signed (both by the subscribers and a witness) as indicated.

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